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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CAUSE NO.:
) 1:08-CR-004-SEB/KPF
) Indianapolis, Indiana
-v-) **March 1st, 2010**
) 9:30 a.m.
DALE RUSSELL,) V O L U M E I
)
Defendant.)

**Before the Honorable
SARAH EVANS BARKER, JUDGE**

OFFICIAL REPORTER'S TRANSCRIPT OF
OPENING ARGUMENTS AND TESTIMONY ONLY

Court Reporter: Laura Howie-Walters, CSR, RPR
Official Court Reporter
United States District Court
46 E. Ohio Street
Room 217
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT PRODUCED BY ECLIPSE NT COMPUTER-AIDED TRANSCRIPTION

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1 (Open court.)

2 THE COURT: Good morning, all. You may be seated.

3 We've convened prior to calling down the venire to
4 resolve some legal issues that the parties have placed before
5 the Court in written fashion, but without enough detail for me
6 to be able to rule in a pre-trial way.

7 First let me ask, is there a motion for separation
8 of witnesses?

9 MR. McKINLEY: Yes, the defense would so move.

10 THE COURT: All right.

11 In no particular order, I'm just going to try to
12 march through these things so we don't keep the jury in idle
13 status up there because they're quite ready to come.

14 With respect to the defendant's request to
15 participate in the voir dire by asking 20 minutes' worth of
16 questions after the Court completes its voir dire, until I was
17 just ready to take the bench, I was not apprised of what kinds
18 of questions the defense wanted to ask. So I was going to
19 temporize frankly and ask my standard voir dire, and then
20 invite counsel to the bench as I always do to see if there are
21 areas of omitted questioning or questioning that only the
22 lawyers can propound that require the Court to allow the
23 lawyers to ask those questions. Both of you, lawyers, all you
24 lawyers know that it's my practice not to do that. I'm
25 particularly wary in a case such as this because of the nature

1 of the issues that the jury will have to decide, but I
2 recognize that that also makes it a special case from your
3 point of view, too, and perhaps that's necessary.

4 So I have now your tendered voir dire which I will
5 incorporate into mine, and ask those questions, and then we'll
6 follow the same procedure. I'll have you come up and see if
7 there's anything that you need to ask, or that I didn't ask,
8 or whatever. You can make your request at that time. But I
9 will include, to the extent that it seems appropriate, the
10 questions that you've tendered just this morning.

11 Now, there are a couple other things that had to be
12 resolved before we went too far into the proceedings, although
13 I think we're going to have to have some sessions where
14 proffers happen outside the presence of the jury so that I can
15 make a decision about evidence that one side wants in and the
16 other one doesn't.

17 I have already inquired as to whether the
18 Government's witnesses need the additional protection of
19 references as Jane Doe 1 and Jane Doe 2, and apparently that's
20 not necessary; is that right, Miss Helart?

21 MS. HELART: Your Honor, thank you for asking that
22 question. They're older children now. They are 17 and 15.
23 And we think the trial will just be much more cumbersome to do
24 Jane Doe 1 and Jane Doe 2 and confusing. The defendant is
25 their father, so we're going to go ahead and do the trial with

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1 their real names.

2 If at any time in the future transcripts are
3 necessary, we will be seeking to make them back to Jane Doe 1,
4 Jane Doe 2 in the transcripts. But for purposes of getting
5 through the trial a little more smoothly, we'll just use their
6 names.

7 THE COURT: So it's ordinarily my practice in voir
8 dire to ask the jury if they know any of the people whose
9 names have been provided. I don't have a witness list from
10 you, Mr. McKinley, right?

11 MR. McKINLEY: No, we filed a notice of expert
12 witness, our intent to call John Bower as a witness in our
13 case, and, most likely, Mr. Russell.

14 THE COURT: Do you want me to voir dire on the
15 defendant's testimony issue, that he has a right not to
16 testify?

17 MR. McKINLEY: Yes, if you would, please.

18 THE COURT: So I'll handle it in my questions to the
19 jury in terms of its being undecided basically at this
20 juncture; is that true, or is that -- I don't care if he's
21 undecided. It's how I should handle the question. That's
22 what I'm asking.

23 MR. McKINLEY: I believe how you proposed would be
24 appropriate, Your Honor.

25 THE COURT: Okay. So I will just use those names

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1 as --

2 MS. HELART: Yes. And the only other solution would
3 be "There are two children of Dawn and Dale Russell. Does
4 anybody know any of their children?" But if you read their
5 names, that's fine too, Your Honor, because they are minors.

6 THE COURT: I think I'll just ask their names.

7 MS. HELART: It's not likely the jurors will know
8 them because they're minors, but if there's any chance.

9 THE COURT: Okay, sure.

10 Now, the question is before the Court with respect
11 to whether to allow -- who is named 01? Is that Jane Doe 1 or
12 Jane Doe 2?

13 MS. HELART: Jane Doe 1.

14 THE COURT: Okay -- to allow Jane Doe 1 to testify
15 to certain events that she has some late-breaking
16 recollections by her, but they have to do with acts of
17 molestation or alleged molestation, and whether that testimony
18 should be elicited as part of her direct testimony. Is that
19 what you intend to do, Miss Helart?

20 MS. HELART: Yes, Your Honor.

21 THE COURT: And what's the relevance of that?

22 MS. HELART: The relevance, Your Honor, is that the
23 Government sees this as clear relevance under Rule 414 and
24 also under Rule 404(b).

25 Under 404(b), prior sexual contact is clear evidence

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1 to his intent, his motive, his knowledge, and his lack of
2 mistake or accident should those be his defenses.

3 Under 414, an even broader rule exists applying to
4 crimes-against-children cases. It comes in on any matter upon
5 which it is relevant.

6 THE COURT: And that's what I'm asking, what's the
7 relevance?

8 MS. HELART: In this trial, Mr. Russell surely has
9 to be pitting himself against Jane Doe 1 on at least one
10 credibility --

11 In this trial, Mr. Russell surely has to be pitting
12 himself against Jane Doe on at least one credibility point
13 that's important. That is that the pictures he took of her
14 were nonsexual in nature. We believe this because he wants to
15 argue somewhat -- we believe his argument is that he was a
16 nudist, but prior sexual contacts with her show his sexual
17 attraction to her, and also show a sexual purpose, therefore,
18 in taking the photographs.

19 The prior sexual contact with her is highly relevant
20 because she is the same girl as is in the pictures.

21 THE COURT: And when did it happen?

22 MS. HELART: It happened when she was in about
23 fourth or fifth grade.

24 THE COURT: Was it at the time --

25 MS. HELART: Probably one to two years prior to the

1 pictures being taken, but his feelings and biases toward her
2 on a sexual level are surely relevant to the rules of evidence
3 recognized under 404(b) and 414.

4 Also, as part of one of the molestation incidents
5 where Mr. Russell provided her what he called a muscle
6 relaxer, we had, as part of our pre-trial interviews with
7 which the defense was allowed to speak with her, her draw a
8 picture of this. What it ends up looking like is an adult sex
9 toy vibrator, and I think a jury would surely see that
10 providing a 12-year-old and a 10-year-old-girl with vibrators.

11 THE COURT: I thought you said they were younger
12 than that? That's why I'm asking when did these acts of
13 molestation occur.

14 MS. HELART: Yes, Jane Doe 1 remembers that it was
15 like fourth or fifth grade.

16 THE COURT: How many acts are there?

17 MS. HELART: We would like to introduce three acts
18 of behavior that we think are sexual in nature. One of them
19 was when he placed this vibrating object against her vaginal
20 area.

21 THE COURT: And how old was she and when was that?

22 MS. HELART: She recalls about fourth or fifth
23 grade.

24 THE COURT: And when is that vis a vis the photos
25 that were taken that are at issue here?

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1 MS. HELART: I'm going to ask that. I think it's
2 one to two years prior.

3 (Off-the-record discussion.)

4 The incidents with the adult sex toy, the vibrator,
5 was when he lived at the Braeburn Apartments between 2003 and
6 2004.

7 Our pictures are taken in the calendar year 2004.
8 So actually, you know, depending on when it was because she's
9 not clear on the exact time, month, et cetera, but it is in
10 the same time zone.

11 THE COURT: What's the other one?

12 MS. HELART: The other one is an incident of the
13 kids, all three of the Russell children, putting powdered
14 sugar on each other's nude bodies. He puts the two other
15 children in the shower. There's two photographs that we seek
16 to put into evidence because he's taken pictures of them with
17 powdered sugar on their bodies. He puts --

18 THE COURT: When did that happen?

19 MS. HELART: She doesn't know but it's about the
20 same time period.

21 THE COURT: The time period of what?

22 MS. HELART: Of when they lived at the Braeburn
23 Apartments.

24 THE COURT: When the photos were taken?

25 MS. HELART: Correct.

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1 THE COURT: The photos were taken when they lived at
2 the Braeburn Apartments.

3 MS. HELART: Not all the photos because --

4 THE COURT: That's why I'm trying to get you to give
5 me the particulars here. So don't mislead me with vague
6 responses because I can't tell from -- either from what you've
7 written or from what you say. So you've got to nail it down,
8 Miss Helart.

9 MS. HELART: Mr. Russell lived at Braeburn
10 Apartments between August 2003 and August of 2004. Before
11 that, I was given a more specific time period by my
12 co-counsel.

13 Just before August 2003, Mr. Russell lived with a
14 woman named Mary Kay. This is from the children's
15 recollections. The powdered sugar incident happened at
16 Mary Kay's house shortly before they visited their father at
17 the Braeburn Apartments. So probably sometime in 2003.

18 THE COURT: Was he there?

19 MS. HELART: Yes.

20 THE COURT: Did he do that? Did the defendant do
21 the powdered sugar --

22 MS. HELART: Yes.

23 THE COURT: -- routine.

24 MS. HELART: Yes, Mr. Russell --

25 THE COURT: What does "shortly before" mean? I mean

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1 was it the same day? Six hours before? Or was it six months
2 before?

3 MS. HELART: I don't know. I don't know.

4 THE COURT: What's the third?

5 MS. HELART: But it's not just the powdered sugar.
6 It's an incident where Jane Doe 1 was placed up on the toilet
7 and Mr. Russell licked her vaginal area with the powdered
8 sugar on it and then placed her in the shower. So that was an
9 incident --

10 THE COURT: How old was Jane Doe 1 at the time?

11 MS. HELART: 11.

12 THE COURT: And she was how old when the photos were
13 taken?

14 MS. HELART: 11 and 12 depending on what time of the
15 year in 2004. Her birthday is 1992, so that's -- you know, it
16 will always depend on what time of the year it happened.

17 THE COURT: Okay. Then the third item?

18 (Off-the-record discussion.)

19 MS. HELART: In the third incident, which we filed
20 notice about Friday, is Jane Doe 1 in the shower and her
21 father is washing her. She recalls that happening at
22 Mary Kay's house.

23 (Off-the-record discussion.)

24 MS. HELART: And while Mr. Russell was washing her,
25 he said a statement to the effect, "Don't you want a personal

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1 washer?" She is a person who would have been 10 or 11, would
2 normally take her own showers by that point. So this was an
3 unusual event because he -- her father was helping her wash.

4 THE COURT: And how did he help her wash?

5 MS. HELART: Helped her wash her private areas, her
6 vaginal area.

7 THE COURT: And that would have been when vis a vis
8 the photo shoot?

9 MS. HELART: Before the photo shoots.

10 THE COURT: All of these were prior to the photo
11 shoot.

12 MS. HELART: Yes, because the photo shoots, all that
13 we have charged, occurred in 2004.

14 THE COURT: All right. So those are the three acts
15 of alleged molestation, or I'll just say the three acts --

16 MS. HELART: The three acts, yes.

17 THE COURT: -- that the Government intends to elicit
18 in the direct examination of Jane Doe 1?

19 MS. HELART: Yes. And again, we would say the same
20 child. It shows clearly his feelings towards her, his sexual
21 feelings toward her, making his motive to take these pictures
22 very relevant.

23 THE COURT: Okay.

24 MS. HELART: And we also point out that 414 doesn't
25 have as part of the rule a time frame, but we know the Court

1 has to rule on relevance, but it doesn't have a time frame to
2 do it.

3 THE COURT: Yes -- well, that's right.

4 Mr. McKinley, what's the Government's response to
5 this proffer by the Government -- what's the defense response?

6 MR. McKINLEY: Your Honor, to the extent that these
7 purported acts have any relevance, we'd say it's marginal at
8 best to show his state of mind and to show, you know, his
9 motive to take the photographs.

10 Counter to any marginal relevance it does have here
11 is the fact that I think it's going to tend to confuse the
12 issue, obscure the issue before the jury.

13 The issue here is the images themselves, whether the
14 images that are charged in the indictment portray
15 sexually-explicit conduct. The impact of this evidence, of
16 course, is, you know, from the defense perspective is it's
17 devastating. And 404(b), of course, and 414 are not
18 unlimited. The Court still has to go through the balancing
19 factors in 403. And we would submit that the prejudicial
20 impact here greatly outweighs any probative value this would
21 have.

22 The factors that we laid out and discussed briefly
23 in our response to the Government's trial brief lay out the
24 factors the Court is to consider, including the similarity of
25 the uncharged acts to the crime that's charged. Here we're

1 talking about acts of improper touching compared to acts of
2 taking photographs of portraying sexually-explicit conduct.

3 So there is really marginal similarity. Certainly
4 they both carry with them a sexual connotation, but the acts
5 themselves are very dissimilar.

6 With regard to the frequency of the prior acts,
7 we're talking about three somewhat isolated instances. The
8 allegations are certainly that there's only comparatively few
9 instances.

10 The proximity in time, I have to defer to the
11 Government's description. But the fact that there has been
12 this intervening amount of time, these matters have only come
13 to light in the last couple of weeks, notwithstanding multiple
14 opportunities for this information to be disclosed.

15 THE COURT: As to all three? They came to life in
16 the last couple of weeks as to all three incidents?

17 MR. McKINLEY: That's correct. That is correct. In
18 fact, it came to light after my own interview of Jane Doe 1
19 during which she -- I specifically asked her about any prior
20 acts of improper touching.

21 She reported there had been no prior acts. And
22 following my interview of Jane Doe 1, which was on February
23 the 5th, the Prosecutor's office called me and said that she
24 had disclosed that these acts had occurred.

25 The intervening circumstances between the time these

1 acts purportedly occurred and a couple of weeks ago include,
2 as I understand, multiple counseling sessions, multiple
3 questions or questioning by law enforcement investigators,
4 Child Protective Services, four or five meetings with the
5 United States Attorney's Office, and what, a span of at least
6 five or six years during which she has been separated,
7 isolated from her father. She hasn't seen her father in five
8 years.

9 Given the remoteness in time and all these
10 intervening circumstances and the late disclosure of this
11 information, we think all countenance against admissibility of
12 these in the trial, again the prejudicial impact I need not
13 expound on. Your Honor knows what an impact this is going to
14 have on any jury. It's going to be very troubling.

15 I don't want to have this trial turn into a jury
16 judgment of my client based on that conduct rather than for
17 what's charged here; that is, are these images depicting
18 sexually-explicit conduct? Do they portray lascivious
19 exhibition of the genitals?

20 Our position, I think, as made evident in our
21 response, is that this is a simple portrayal of nude children.
22 There's no sexual intercourse, any masochistic, sadistic abuse
23 portrayed here. It's just simply images portraying nudity and
24 does not rise to that level.

25 That's the question for the jury to decide, and I

1 think that evidence of these alleged acts, which I don't know
2 have been corroborated in any way, shape or form, are going to
3 be such that the issue's likely to be obscured by the jury,
4 confusing, and I think the prejudicial impact outweighs any
5 probative value that it has here.

6 THE COURT: Miss Helart?

7 MS. HELART: The defense point is exactly why this
8 is all very relevant. It absolutely is devastating. It
9 actually, though, bears right on the heart of the matter,
10 which is did he take these pictures, did he use, persuade,
11 entice, this minor, Jane Doe 1, to produce pictures, to engage
12 in sexually-explicit conduct for the purpose of producing the
13 pictures?

14 And instances of clear sexual acts upon her, with
15 her, show clearly what he had in mind when he was taking the
16 pictures of her. And the time frame is just not that off,
17 which is one concern that this Court would have. It is
18 exactly the heart of the issue, Your Honor. So we're asking
19 that this evidence come in.

20 Mr. McKinley is correct. She has been asked many
21 times in the past "Has your father ever done anything,
22 touching you in an inappropriate way?" She's answered the
23 question no. I can never explain why children disclose -- the
24 timing of their disclosure.

25 The truth is the trial was coming. We were

1 interviewing her for pretrial purposes. Mr. McKinley has had
2 two opportunities to speak with her about this. And the
3 second that she disclosed it, we, of course, called the
4 defense and told him. But as far as whether it was relevant,
5 we absolutely think this is the most highly relevant thing
6 that the jury has to decide in this trial about these
7 pictures.

8 THE COURT: Okay, thank you. I'm going to take this
9 under advisement so that I can get some of these other issues
10 resolved before we bring down the jury.

11 With respect to the issue of the defense evidence on
12 nudism and the defendant's interest in that activity and
13 participation in that activity, I will allow the defendant to
14 testify to the fact that he practices nudism, that it's an
15 interest, and that he has, from time to time, included his
16 children in nudist activities and so forth; but I will not
17 allow him to bring in pictures and paintings and other
18 depictions, photographic or otherwise, that he indicates
19 inspired him in his photography and his artistry. And I won't
20 permit him to testify to the publications that may come out of
21 nudism and so forth; nor can he call as a witness his expert
22 witness to testify about nudism.

23 This case is not about nudism. This is about these
24 photos and the defendant's actions, alleged actions, in
25 creating them, whatever the purpose was, so he could be a

1 nudist and be a drug dealer, for example. And it doesn't
2 excuse the photographs.

3 To the extent that it bears on the factor about the
4 lasciviousness intentions of the defendant, as is one of the
5 factors that the Court is going to instruct the jury as a
6 factor that it can consider in making the determination about
7 the sexually-explicit conduct, and the lascivious exhibition
8 of any genitals and the pubic area of any person, the last
9 factor is that whether the visual depiction is intended or
10 designed to elicit a sexual response in the viewer may have
11 some marginal relevance to nudism, but it does not constitute
12 a defense to this action. And so the Court will not permit
13 the other periodicals, which, of course, we don't know whether
14 they also may be offensive in a criminal way under this
15 statute because I doubt if they've been ruled upon, and I'm
16 not going to allow the jury to be distracted by other photos
17 and other materials on the grounds that they justify the
18 defendant's artistic interest and sensibilities.

19 So with those limitations, you can raise the issue
20 that he is a nudist, and that he participated in those
21 activities, and that he did it with his children, and these
22 pictures that were taken were part of that pattern and not
23 otherwise violative of the statute. That line you can
24 develop, but you can't create it as a defense in the sense
25 that if other people do it and they think it's all right, then

1 it trumps the jury's decision as to whether these particular
2 depictions are violative of the statute.

3 So I'll impose those restrictions on you, and you
4 need to know those as you make your opening statement to the
5 jury.

6 Hang on one minute, please.

7 (Off-the-record discussion.)

8 I want to raise the issue with respect to the
9 Government's intention to put in additional photos beyond
10 those that have been identified in the indictment as the
11 charged conduct, the 81 photos, or something to that effect.

12 So, Miss Helart, what's your intention with respect
13 to the additional photos? What's the relevance of those?

14 MS. HELART: Your Honor, we have the exhibit. We
15 have the exhibit if the Court would like to see what we're
16 talking about. And the Government believes, especially with
17 Mr. Russell testifying that he's a nudist, that there's great
18 value in the jury looking at the entire photo session of
19 Count 1. This is one area of other uncharged pictures,
20 another area of other photo-taking sessions, but the exhibit
21 that has been marked Exhibit 1B would be the entire photo
22 session of Count 1.

23 THE COURT: Is that the 81 photos?

24 MS. HELART: Yes, it's 86.

25 THE COURT: 86?

1 MS. HELART: Yes. And if the Court or the jury
2 looks at these, and you'll see how many don't fit within the
3 technical definition under 2256, they couldn't be charged, but
4 the pictures tell something very, very important. They tell
5 us the whole story of Count 1, and that this blanket didn't
6 just come off in a "whoops" scenario. It tells us that this
7 girl, because her testimony will corroborate this, this wasn't
8 her just really waking up, that Mr. Russell took these as a
9 joke and kind of silly. The extra pictures show her covered
10 and partially covered, sometimes a bare breast, sometimes bare
11 bottom, all pictures not being able to be charged under
12 federal law, but yet completely noteworthy, relevant,
13 corroborative of her story that Dale Russell directed the
14 actions that she's doing in the photos.

15 She's expected to describe that this was a photo
16 session staged by Mr. Russell to make it look like she was
17 waking up out of bed. The viewer of photos are led to believe
18 that she sleeps in the nude when normally she does not.

19 Mr. Russell and other viewers of this material watch
20 then as she puts the SpongeBob blanket up and around her
21 several times, taking it partially off, completely off,
22 strategically --

23 THE COURT: Are these still photos as opposed to a
24 video?

25 MS. HELART: Correct, they are still photos.

1 THE COURT: But they're sequential?

2 MS. HELART: They are sequential, yes.

3 THE COURT: And that's the way you've organized the
4 exhibit?

5 MS. HELART: Yes, this exhibit was not organized as
6 well. We have printed them out again with their time stamps
7 on them so we're going to see them sequentially.

8 The whole thing --

9 THE COURT: Was only the defendant present as the
10 photographer?

11 MS. HELART: Yes.

12 THE COURT: There was no assistant?

13 MS. HELART: No, no assistant. It was her and him.

14 THE COURT: Where were they taken?

15 MS. HELART: In a room, in a bedroom.

16 THE COURT: At a house?

17 MS. HELART: In his residence. All the photo-taking
18 sessions that occurred with him were during his visitation
19 weekends.

20 THE COURT: So no other adults present?

21 MS. HELART: Sometimes there were other adults
22 present, but in this photo-taking session, only he and her
23 were -- the only other adult would be a friend of his on some
24 occasions that are in outdoor settings or in a gym setting,
25 and -- well, and the only other possible adult would be his

1 present wife. She was sometimes present during the photo
2 sessions with both the girls.

3 But both the girls are clear that only Mr. Russell
4 took photos of them, even if there were other people in the
5 room. But this is an example of just him and her in the room.

6 And so this whole thing, in somewhat crass terms, is
7 a strip tease. It is putting clothes on, taking clothes off,
8 very teasing, very salacious behavior between when she wakes
9 up out of bed nude, takes the blanket off and then gets
10 dressed at the very end.

11 The SpongeBob themed items are items which he bought
12 for her at a Christmas sometime prior; very kid-like, not an
13 accident of her being in the pictures and being a kid herself.
14 She had actually woken up much earlier in the day so this was
15 a very staged photo session.

16 The entire context tells the whole story of this
17 event. Whether he used or enticed or employed this minor,
18 because there will be some evidence that he paid the girls
19 money for photo sessions to engage in sexually-explicit
20 conduct for the purpose of producing this conduct, because 86
21 times he purposely pointed the camera.

22 THE COURT: Are there other surrounding or pattern
23 photographs with respect to the other charge or just Count 1?

24 MS. HELART: We are seeking just Count 1. There are
25 some others for the other counts. For example, in Counts --

1 THE COURT: Wait a minute, I don't understand that.
2 You're seeking Count 1, but there are others. So are you
3 going to offer them?

4 MS. HELART: If relevant for cross -- under
5 cross-examination, maybe. And we will bring those up to the
6 Court prior --

7 THE COURT: Cross-examination of the defendant?

8 MS. HELART: Of the defendant, yes.

9 Here's an example. Counts 2 and 4 were taken in a
10 gym. It is nude gymnastics that he's taking photos of. Count
11 2 is Jane Doe 1/Jane Doe 1, Count 4 is Jane Doe 2/Jane Doe 2,
12 and she's in a little dance studio that's part of the gym.

13 There's a video that was taken as part of this set
14 as well. And so this whole gym video has audio that may be
15 relevant, but only for cross-examination would we be seeking
16 to get it in. So for the four charged counts, Exhibit 1B,
17 we'd be seeking to put this in in Jane Doe 1's testimony.

18 THE COURT: As 404(b) evidence?

19 MS. HELART: Yes, because the 7th Circuit doesn't
20 like the language inextricably intertwined, so certainly it
21 would go to his intent, his lack of mistaken accident, and all
22 the other possible 404(b) --

23 THE COURT: In pattern?

24 MS. HELART: Yes, in pattern.

25 THE COURT: Mr. McKinley?

1 MR. McKINLEY: Just very briefly, Your Honor.

2 Again, our position on this is that they have --
3 these additional images have marginal relevance and are likely
4 to confuse the jury. Again, I don't dispute what Miss Helart
5 described as the charged images in Count 1 being a part of a
6 larger series of images that they have recovered.

7 But again, the issue for the jury is going to be
8 just the charged images. And to the extent these additional
9 images are relevant to show that the charged images were
10 staged somehow, again, I don't understand how that plays into
11 the case as being relevant because, you know, artistic
12 expressions are -- which this is a series of photographs that
13 were taken that artistic expressions are often posed or staged
14 to get the image that the photograph wants, but that doesn't
15 make the charged images more likely to go beyond the
16 boundaries that the law clearly sets in determining what is
17 sexually-explicit conduct.

18 So again, I think the issue is likely to be obscured
19 here by the introduction of these other images. I mean, what
20 is the jury to conclude from those other images that they
21 can't conclude from looking at the charged images?

22 THE COURT: The Court will permit the 404(b)
23 evidence with respect to the additional photos that surround
24 the charged conduct in Count 1. It seems to me to be pretty
25 classic 404(b) evidence. It does establish the elements

1 Miss Helart mentioned: Pattern, lack of mistake, similarity,
2 et cetera. So this evidence is permissible under 404(b).

3 The evidence of the sexual acts, the alleged
4 molestations, seems to me to be more remote and less -- and
5 therefore less relevant. It's inherently prejudicial, of
6 course, so the Court has to balance very carefully. So the
7 Court will rule that the Government cannot bring out the
8 molestation incidents, the three that were cited to the Court
9 as part of its case-in-chief.

10 The door may be opened to the inclusion of that
11 evidence on cross-examination of the defendant, depending on
12 how that testimony goes, and also as possible rebuttal
13 evidence depending on what the defense evidence is, if any.

14 The defendant's not obligated to present any
15 evidence, but if the defense does not present evidence on
16 issues that would be -- that would make this relevant and
17 relevant as impeachment and relevant as to the charges in the
18 indictment, then it can't come in any other way.

19 So that's my ruling on that. I think we need to
20 call down the jury now and get started. I believe I've
21 covered most of the pretrial matters that you need to know
22 about as we go forward.

23 Am I right about that? Anything else, Miss Helart?

24 MS. HELART: No, Your Honor.

25 THE COURT: Anything else, Mr. McKinley?

1 MR. McKINLEY: There is one other thing. Will the
2 Court be giving preliminary instructions to the jury that will
3 include the offense elements? It was something we were
4 intending to address in opening statement.

5 THE COURT: I usually don't, but I don't have to do
6 the preliminary instructions right away, so let me think about
7 that. Certainly not before the voir dire.

8 MR. McKINLEY: Right. But we had intended to -- the
9 Government and defense has --

10 THE COURT: Have you proffered an issue instruction?

11 MR. McKINLEY: No, but we have --

12 THE COURT: See, I need to see yours before you
13 start telling what the law is.

14 MR. McKINLEY: Actually, we're going to use what the
15 Government has proffered. We've worked with the Government in
16 trying to come to agreement and have come into agreement as
17 far as the elements of instruction, and the definition of
18 lascivious exhibition. Miss Cook will be doing the opening
19 statement as she had proposed to.

20 THE COURT: Are you going to speak to the essential
21 elements when you do your opening statement, Miss Helart?

22 MS. HELART: I will mention the phrase "lascivious
23 exhibition of the genitals or pubic area," and I will not go
24 into it further. I'm going to say they're going to get
25 further guidance later.

1 THE COURT: Let me -- have you given us that
2 instruction?

3 MS. HELART: I have tendered to the Court the
4 Government's proposed instructions, and we did work together.
5 We only had one disagreement which -- it's not part of what
6 the Court got. So what the Court got is what the parties
7 agreed on.

8 THE COURT: So it's stipulated between you
9 essentially?

10 MS. HELART: Yes.

11 MR. McKINLEY: Yes. Essentially it is, yes, Your
12 Honor.

13 THE COURT: I'll look at it again and give you a
14 final word, but I can't foresee that that would be a problem,
15 Mr. McKinley.

16 MR. McKINLEY: Thank you, Judge.

17 THE COURT: Mr. McKinley, while you're standing
18 there, would you turn that podium so that it addresses the
19 jury directly, please?

20 And you may call down the jury (indicating).

21 We have 51 people who have responded to the venire.

22 So Miss Helart, are you prepared to read the
23 indictment?

24 MS. HELART: Yes.

25 THE COURT: Do we still expect the trial to last

1 three days?

2 MS. HELART: Yes. Certainly no more than that.

3 It's conceivable we could go --

4 THE COURT: Three days is a safe estimate for the
5 jury?

6 MS. HELART: Yes.

7 MR. McKINLEY: Yes.

8 (Off-the-record discussion.)

9 (Open court)

10 (Prospective jurors were brought in and voir dire conducted)

11 (The venire was sworn.)

12 THE COURT: Very good. Thank you. And be seated
13 just for a minute. I know we've gone really through the lunch
14 hour here and you've been kind to not make too much of an
15 issue of that, although I expect you're ready for a break, and
16 so we all are.

17 I just want to tell you two things before you leave.
18 I'll have full instructions for you when you come back. You
19 are now officially impaneled as a jury, and so we won't be
20 able to take any of the succeeding steps without you here. So
21 you have to please arrange your activities and your time
22 schedule and so forth so when the Court's ready to convene,
23 you're ready to go as well.

24 We're going to take a lunch hour first thing, and
25 I'll tell you the time in just a minute. But during this

1 period of time while you're away from the court and away from
2 these proceedings, you must refrain from talking about the
3 case among yourselves or allowing anyone to talk to you about
4 it.

5 The truth is right now you don't know anything about
6 the case. I've told you about it, but you're to make your
7 decision on the evidence, not on the basis of what I've told
8 you. So you have to wait till the evidence comes in and then
9 finally match it up with the instructions on the law as I give
10 them to you.

11 So if anyone should try to talk to you about it, if
12 anyone should approach you about it, you should bring that to
13 my attention right away. So don't talk about it among
14 yourselves or allow anyone to talk to you about it.

15 Now, my guess is that you'll be like most juries,
16 that having been selected, you'll want to call in and tell
17 somebody who pays attention to your schedule with you that
18 you're going to be tied up through Wednesday of this week and
19 what you're going to be doing. So you'll call the office or
20 you'll call your spouse or you'll call your family member, and
21 you'll say "Hey, guess what, I got picked for jury duty." And
22 that's the red flag because what is likely to generate from
23 the other person is "Really? What's the case about?" And
24 they won't understand the importance of the promises you've
25 made and how important it is that you not talk about this and

1 so forth.

2 This is something you've done. So you have to help
3 them help you be a good responsible juror. So you head them
4 off at the pass right away. You cut them off and say "I can't
5 tell you. I can't tell you anything about this case." And
6 then you threaten them, and you say "After it's over, I'm
7 going to tell you everything about it." And they'll back off
8 pretty quickly. And you can do that after it's over. You can
9 tell them all about it. But until then, really, it's one of
10 those things you just have to hold close inside yourself until
11 you're finally prepared to deliberate and to reach a verdict.

12 I'll tell you why this is so important. First of
13 all, it's going to be just your decision, and no one else is
14 entitled to or ought to be invited into helping you decide the
15 case. They won't have listened to the evidence. They won't
16 have done any of the things we've talked about. They can't
17 weigh the credibility of the witnesses.

18 The moral weight of deciding is not on them. They
19 could just be a hero on your time. They might give you advice
20 that's completely stupid, but you feel a little beholding to
21 them because they're close to you and you don't want them to
22 think you're stupid if you did something.

23 So don't invite them in for that purpose. It's a
24 decision that's entrusted just to you, and if you didn't give
25 us every reason to believe that you understand that and you're

1 capable of being entrusted with that, you wouldn't have been
2 selected. But you have been selected, so be worthy of that
3 trust.

4 The second reason that you need to hold the horses
5 here a little bit so that you make your decision at the end of
6 the trial is because each witness and each question and answer
7 to each witness is entitled to the same consideration by you
8 as every other witness.

9 So the first witness that comes, you'll be right on
10 the edge of your chair. You're going to be thinking what is
11 this about. And then it gets a little bit more familiar to
12 you, maybe a little bit more old hat, but you have to be as
13 open and receptive to the last witness and the last answer
14 that the last witness gives as you are to the first.

15 And we know about ourselves that when we start
16 telling a story or creating mindset, we want people to tell
17 the story that conforms to our views or our impressions or our
18 preconceived notions. So you're not as open to it as you
19 would be if you didn't encumber them with that, if you didn't
20 have any expectations of them; only that they'll tell you the
21 truth, the whole truth and nothing but the truth.

22 So let's take a lunch break. It's 1:00. Let's
23 reconvene at 2:15. That will give you a chance to figure out
24 where you are downtown. You shouldn't have to wait in any
25 lines now for lunch. I hope everything's not completely

1 picked over. I doubt it on a Monday, if it's picked over.

2 We'll reconvene and we'll be ready to go at 2:15.

3 So please gauge your timing to be back then, too.

4 Oh, I told you just two things, but here's a third.

5 Your jury room, as you know from when you gathered this
6 morning, is on the third floor. So when you come and go in
7 our courthouse, get on that elevator, and go from the first
8 floor, where you're coming in, up to the third floor.

9 The lawyers use this room, this space out here, I
10 should say, this anteroom to confer about things and to get
11 witnesses lined up, and it's sort of a gathering place, and it
12 will be awkward if you're bumping into each other.

13 So don't come here on the second floor. That's
14 where you are now. Go on up to the third floor. That door
15 will be open for you. Don't leave valuables, but it's
16 available to you to use whenever you want to access it. But
17 you should come and go from the first floor to the third
18 floor, please so that you're not otherwise caught in some
19 awkward encounter.

20 Anything else for the jury before we recess for
21 lunch, Miss Helart?

22 MS. HELART: No.

23 THE COURT: Mr. McKinley?

24 MR. MCKINLEY: No, nothing further at this time,
25 Your Honor.

REDACTED TRANSCRIPT

34

1 THE COURT: Okay. Those of who you are familiar
2 with downtown, give your fellow jurors some directions as to
3 where the restaurants are. The good news is Miss Schneeman
4 knows every one of them, so she'll be able to accommodate your
5 tastes.

6 If you have coats in the back, swing by and get them
7 right now, and come across the well of the court and out this
8 door where I came in this morning. And you'll go up to your
9 jury room and depart from there.

10 (Jury excused)

11 (Open court, no jury present.)

12 THE COURT: The jury's departed. Lawyers, be sure
13 to give the jury questionnaires to Miss Schneeman before you
14 leave today. We'll see you in an hour and 10 minutes.

15 (Recess taken from 1:04 p.m. to 2:29 p.m.)
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A F T E R N O O N S E S S I O N

(Open court, jury present)

(Open court.)

THE COURT: You may be seated. I hope everyone had a nice lunch break. I guess I fairly well assured myself that you would because I got to the point of really hungry at 1:00.

Members of the jury, now that you've been selected and sworn, I'm going to give you preliminary instructions to guide you in your participation in this trial. It will be your duty to find from the evidence what the facts are.

You and you alone are the judges of the facts. You will then have to apply to those facts the law as I give it to you, and you must follow that law whether you agree with it or not.

Nothing that I may say or do during the course of the trial is intended to indicate, nor should be taken by you as indicating, what your verdict should be. The evidence from which you will find the facts will consist of the testimony of the witnesses, they'll be here at the witness stand right before you; documents and other things received into the record as exhibits, and any facts that the lawyers agree to or stipulate to.

We use that word "stipulate" in court to mean an agreement as to whatever the matter is between the parties.

You must also accept the facts that the Court

1 instructs you to find. Certain things, however, are not
2 evidence and must not be considered by you. I'll list for you
3 now the things that are not evidence.

4 First, the statements, arguments, and questions by
5 lawyers are not evidence.

6 Secondly, the objections to questions are not
7 evidence. Lawyers have an obligation to their clients to make
8 objections when they believe evidence is being offered that is
9 improper under the rules of evidence.

10 You should not be influenced either by the objection
11 or by my ruling on it. If the objection is sustained, then
12 ignore the question. If the objection's overruled, treat the
13 answer like any other. If you are instructed that some item
14 of evidence is received for a limited purpose only, then you
15 must follow that instruction.

16 The third thing that's not evidence is testimony
17 that I order excluded or tell you to disregard. It's not
18 evidence and it must not be considered.

19 Fourth, anything that you may have seen or heard
20 outside the courtroom is not evidence, and it must be
21 disregarded completely. You are to decide this case solely on
22 the basis of the evidence that's presented here in the
23 courtroom.

24 Now, there are two kinds of evidence. There's
25 direct and circumstantial evidence. Direct evidence is direct

1 proof of a fact such as the testimony of an eyewitness.

2 Circumstantial evidence is proof of facts from which
3 you may infer or conclude that other facts exist. So I'll
4 give you an example.

5 Maybe you heard that the weather this week is
6 supposed to be a little bit warmer than it's been the last few
7 weeks. It's supposed to get up in the 30s, and towards the
8 end of the week, maybe even up into the 50s. So we had a lot
9 of snow there for a while and it's still sitting around.

10 So if we took just this morning, for example,
11 March 1st on this Monday, if there were conversations at your
12 house before you left this morning about what to wear and what
13 to expect by way of the weather, you might be able to
14 participate in that conversation just by other things that you
15 know.

16 For example, if you wanted to know if it's already
17 warmed up, how would you know that if you're sitting inside in
18 your robe and your slippers still? Obviously the easiest way
19 is to go outside to see if it's warmer, so that's direct
20 evidence. It's warmer, you can tell that.

21 But there's some other ways. How much snow is
22 melted? Whether there was ice this morning on the windshield
23 if your car's parked outside. Whether the newspaper got
24 delivered really early and it's got any icy moisture on it,
25 that sort of thing.

1 So you can tell just by looking for a variety of
2 signs and signals. After all, the thermometer on the window
3 is circumstantial evidence, isn't it? When you look at it,
4 it's telling you something about the weather, but it's not the
5 weather itself. It's giving you a measurement of the weather.

6 So you could have looked out the window and seen
7 that it was maybe 30 this morning. So you would have an
8 answer to your question about whether that warmup has started
9 just by paying attention, but you also could go outside and
10 feel the air yourself, see if it's warm, warmer.

11 So that's a pretty rough example, but it's the best
12 I can do today to give you an example of direct and
13 circumstantial evidence.

14 Direct evidence is direct proof of a fact. Do you
15 want to know if it's cold out? Go out and see. And
16 circumstantial evidence is proof of facts from which you may
17 infer or conclude that other facts exist.

18 There's not as much snow out there as there was
19 yesterday. Some of it's melted and so forth. I'll give you
20 further instructions on these, as well as other matters, at
21 the end of the trial to keep in mind at that time, and to use
22 in your deliberations, but for now, you can keep these things
23 in mind, and in particular, you should keep in mind that you
24 can consider both kinds of evidence, both direct and
25 circumstantial.

1 It will be up to you to decide which witnesses to
2 believe, which witnesses not to believe, and how much of any
3 witness's testimony to accept or reject. And I'll give you
4 guidelines for determining that issue. We call that the
5 credibility of the witness. Do you hear in that the credit
6 you're going to give to that testimony? The witness's
7 credibility means the witness's believability.

8 And I'll give you some instructions to help guide
9 you in making that assessment at the end of the case. As I
10 told you, this is a criminal case. And there are three basic
11 rules about a criminal case that you should keep in mind.

12 First, the defendant, Mr. Russell, is presumed
13 innocent unless and until he's proven guilty. The indictment
14 brought by the Government against the defendant is only an
15 accusation, nothing more. It's not proof of guilt or anything
16 else. Therefore, Mr. Russell starts out with a clean slate.

17 Second, the burden of proof is on the Government
18 until the very end of the case. The defendant has no burden
19 to prove his innocence or to present any evidence or to
20 testify.

21 Since Mr. Russell has the right to remain silent,
22 the law prohibits you from arriving at your verdict by
23 considering that he may not have testified.

24 The third special rule is that the Government must
25 prove Mr. Russell's guilt beyond a reasonable doubt. And I'll

1 give you further instructions on this point later, but bear in
2 mind that in this respect, a criminal case is different from a
3 civil case. Maybe you've heard of the standard in a civil
4 case meaning by a preponderance of the evidence. That applies
5 in a civil case.

6 In a criminal case, the standard, the measure for
7 how much convincing force the evidence has to have before a
8 jury can find a person guilty is beyond a reasonable doubt.

9 Now, in this case, as I've told you, the defendant
10 is charged with four offenses, four counts. And I will give
11 you detailed instructions on the law to guide you -- at the
12 end of the case to guide you in your assessment of the
13 evidence, and those instructions will control your
14 deliberations and decisions.

15 I have asked the Government counsel to read to you
16 the indictment, which she did. And I understand that both
17 lawyers are going to talk to you about the charge, or the
18 charges, and the essential legal elements, what that means in
19 terms of what the Government has to prove to make its case.

20 So I'll leave to them to review that. At the end of
21 case, I will give you instructions on the essential legal
22 elements of these charges.

23 Now, a few words about your conduct as jurors.
24 First, I instruct you that during the trial, you're not to
25 discuss this case with anyone or permit anyone to discuss it

1 with you. Until you retire to the jury room at the end of the
2 case to deliberate on your verdict, you simply are not to talk
3 about this case.

4 Secondly, do not read or listen to anything touching
5 on this case in any way. If anyone tries to talk to you about
6 it, bring it to my attention promptly. You can do that by
7 telling Miss Schneeman, and she'll be sure to tell me.

8 Third, do not try to do any research or make any
9 investigation about the case on your own. The research and
10 the investigation will have happened by the people who are
11 entrusted with that responsibility; that is to say, both
12 parties, and they'll present the fruits of their efforts here.
13 So you don't need to make your own, and in fact you shouldn't
14 make your own investigation or do your own research.

15 Finally, do not form any opinion until all the
16 evidence is in. Keep an open mind until you start your
17 deliberations at the end of the case.

18 Now, let me speak to you about taking notes during
19 the trial. You may take notes if you wish, but you're not
20 required to. There's no expectation of you to take them.
21 We've given you paper and pencils, pens, I guess, if you want
22 to make notes. The notes that you would make would be
23 entirely for your own use and your own help. They are not
24 going to have any other purpose, and for that reason, we would
25 ask you to leave the notes here in the evening. And they'll

1 be available for you when you come back after each break.

2 The circumstance, the problem, you might say, with
3 notetaking is that sometimes notetaking can be a colossal
4 distraction, and it will keep you from noticing things and
5 paying attention to things that you probably or maybe want to
6 take in as part of your consideration of the evidence.

7 There are lots of ways in which you'll be asked to
8 assess a witness's credibility. And one of the ways you
9 usually do that, you're not usually walking down the street
10 with a notepad and writing down "somebody's drumming their
11 fingers on the desk," but you take that in. You notice that
12 about the witness, something like that.

13 And so you want to be free to take in all the
14 evidence as it comes to you. And part of it is visual. And a
15 lot of it is hearing and thinking about what was said without
16 trying to write it down. So don't let notetaking be a
17 distraction so you miss the forest for the trees here.

18 The other thing about notetaking is that sometimes
19 we don't want to say it this way to each other, but sometimes
20 some of us are better at it than others, and we miss the
21 point. And so the notetaking's just for you. If it's going
22 to help you that Witness X wore a red tie, you might just want
23 to write down that, "red tie" or something, if there's
24 something in particular, or go ahead and take more fulsome
25 notes if you think it will be helpful to you and you can do it

1 with none of these other risks.

2 When it comes time to deliberate, it will be a
3 misuse of the notes if your deliberations somehow devolve into
4 a contest over who's got the most accurate notes. So if one
5 of you is likely to say "Hey, I wrote it down, I know that's
6 the fact," and it's not remembered that way by somebody else,
7 you have to be respectful of the other person's opinion as
8 well because maybe this is what they didn't want to say, you
9 didn't get it.

10 So the notes are intended to be a help. To the
11 extent that they're not a help, don't feel like you need to do
12 it. As I said, they're private to you. And you may use them
13 but you wouldn't want to misuse them at the time when you're
14 deliberating on your verdict.

15 I'll read to you the standard instructions so that
16 you know what the law says because I've sort of embellished on
17 it here. If you want to take notes during the course of the
18 trial, you may do so. However, it's difficult to take
19 detailed notes and pay attention to what the witnesses are
20 saying at the same time.

21 If you do take notes, be sure your notetaking does
22 not interfere with your listening to and considering all of
23 the evidence. Also, if you do take notes, do not discuss them
24 with anyone before you begin your deliberations. Do not take
25 your notes with you at the end of the day. Be sure to leave

1 them here in the jury room.

2 If you choose not to take notes, remember that it is
3 your own individual responsibility to listen carefully to the
4 evidence. You can not give this responsibility to somebody
5 else who is taking notes. We depend on the judgment of all
6 members of the jury. So you all must remember the evidence in
7 the case.

8 The trial is ready to begin. First, Miss Helart, on
9 behalf of the Government -- I assume it's Miss Helart, it
10 could be Mr. Cook -- will make an opening statement. The
11 opening statement, remember, is not evidence. It's simply an
12 outline or a road map or blueprint to help you understand the
13 evidence as it comes in.

14 Next, the defendant's attorney, either Mr. McKinley
15 or Miss Jessie Cook, will make an opening statement. They're
16 not required to, but they have an opportunity to if they wish.
17 Opening statements, as I've said, are neither evidence nor
18 arguments.

19 The Government will then present its witnesses and
20 counsel for the defendant may cross-examine them. Following
21 the Government's case, the defendant may, if he wishes,
22 present witnesses whom the Government may cross-examine.

23 After all the evidence is in, the attorneys will
24 present their closing arguments to summarize and interpret the
25 evidence for you, and then I will instruct you on the law.

1 After that, you will retire to deliberate on your verdict.

2 Now, I want to circle back to emphasize one specific
3 matter because it comes up from time to time, and you need to
4 know from the get-go about how to handle this. You, as
5 jurors, must decide this case based solely on the evidence
6 that's presented here within the four walls of this courtroom.

7 This means that during the trial, you must not
8 conduct any independent research about the case, as I've
9 already told you, or about the matters in the case or the
10 individuals or the corporations involved if there were to be
11 corporations somehow tangentially brought into this.

12 In other words, you should not consult dictionaries
13 or reference materials such as the Internet, websites, blogs
14 or use any other electronic tools to obtain information about
15 this case, or to help you decide the case. Please do not try
16 to find out information from any source outside the confines
17 of this courtroom.

18 Until you retire to deliberate, you may not discuss
19 the case with anyone or even your fellow jurors as I've told
20 you before. After you retire to deliberate, you may begin
21 discussing the case with your fellow jurors, but you cannot
22 discuss the case with anyone else until you have returned a
23 verdict and the case is at an end.

24 I hope that for all of you, this case is interesting
25 and noteworthy. I know that many of you use cell phones,

1 Blackberries, the Internet and other tools of technology. You
2 also must not talk to anyone about this case or use these
3 tools to communicate electronically with anyone about the
4 case. This includes your family and your friends.

5 You may not communicate with anyone about the case
6 on your cell phone, through e-mail, Blackberry, iPhone, text
7 messaging or on Twitter, through any blog or website, through
8 any Internet chat room or by way of any other social
9 networking websites including Facebook, My Space, LinkedIn and
10 YouTube.

11 That completes the Court's preliminary instructions.
12 Do the parties have any objection to the preliminary
13 instructions?

14 MR. MCKINLEY: Not from the defense, Your Honor.

15 MS. HELART: Not for the Government.

16 THE COURT: Then we're ready for the opening
17 statements. Miss Helart, you may lead off.

18 Opening statement by Ms. Helart

19 MS. HELART: Thank you, Your Honor, and good
20 morning.

21 In October 2004, Dawn Russell, who is the ex-wife of
22 Dale Russell, the defendant, received a telephone call from
23 the school where her older daughter attended. The nature of
24 the call was that the school had received information about
25 pictures of her daughter. Ms. Russell responded to the

1 school.

2 Dawn Russell and Dale Russell had been married from
3 between about 1990 and 1998. They had separated in 1996.
4 They had three children together. You will hear from two of
5 those children during this trial.

6 After the divorce, you will also hear that Dawn and
7 Dale Russell had been to court regarding child support and
8 child visitation orders.

9 Specifically, what Ms. Russell learned in
10 October 2004 was that school officials had determined that her
11 older daughter had written a website name on a notebook at
12 school that she traded with some friends. The website name in
13 a round-about-way got back to school officials who saw
14 pictures of concern on it.

15 They printed the pictures to show to Ms. Russell.
16 When Ms. Russell arrived at the school, she saw the pictures
17 herself. The pictures appeared to have come from websites on
18 the Internet and were associated with both of her daughters.

19 Her daughters were dressed in a way that she did not
20 approve. She had not authorized the pictures to have been
21 taken, nor had she authorized them to have been placed on
22 these websites.

23 She learned that Mr. Russell was responsible for
24 taking the pictures and running the websites. Her daughters'
25 websites had fake or other names associated with them.

1 A hearing regarding support or visitation had
2 already been set for October 19th, 2004, within a week of
3 hearing this information from the school. Ms. Russell turned
4 that preset court time into a hearing for an emergency order
5 to determine what Mr. Russell's parenting rights should be.

6 During that hearing, Ms. Russell said that Dale
7 Russell admitted to running the websites and taking the
8 pictures. One result of the hearing was that the judge
9 ordered the websites taken down.

10 Jane Doe 1, the older daughter, and Jane Doe 2, the
11 younger daughter, will both be here to testify. The images
12 charged in Counts 1 through 4 are not the pictures that Dawn
13 Russell saw at the school. The images charged in Counts 1
14 through 4 are from an individual's computer in Canada, and the
15 information about these pictures came to law enforcement in
16 2007.

17 The pictures you will see in Counts 1 through 4 here
18 are of Jane Doe 1 and Jane Doe 2 nude and posed in a bedroom,
19 a gym and a bathroom.

20 One task you will be called on to decide is whether
21 these pictures charged in Counts 1 through 4 amount to what
22 the law says is a lascivious exhibition of the genitals or
23 pubic area of these girls, and you will be given some guidance
24 as to what that means at the end of this trial.

25 Some facts about the pictures that you will hear at

1 this trial are first, that if Dawn Russell did not [sic] know
2 that Dale Russell had put up websites of their daughters, she
3 would have said no to this.

4 Second, the girls had been photographed nude by only
5 one person in their whole lives, their father, Dale Russell.

6 Third, Dale Russell took these pictures and other
7 pictures, including clothed pictures, during his visitation
8 time with his daughters.

9 Fourth, that Dale Russell brought up the ideas of
10 taking pictures, taking nude pictures and putting up websites.
11 The girls did not bring up these ideas.

12 Fifth, that Dale Russell paid the girls for taking
13 pictures.

14 Sixth, that Dale Russell directed the activities in
15 the photo-taking sessions by telling them how to adjust their
16 arms, spread their legs, et cetera.

17 Seventh, that Dale Russell talked to them during the
18 photo-taking sessions with things like "That looks good" or
19 "Hold that pose" or "It looks pretty."

20 Dale Russell ran the websites. The girls' names
21 were changed to fake names. Jane Doe 1 was known as
22 kaseymodel.com, and Jane Doe 2 was known as octobermodel.com.

23 The camera that was used to take the pictures in
24 each of Counts 1 through 4 was determined by looking at data
25 embedded in the pictures called ExEf data, E-X-E-F data. It

1 is data that manufacturers of digital cameras embed into
2 pictures that software can help determine.

3 The Canon camera that took these was of a particular
4 serial number. When this camera was purchased, its owner sent
5 back the registration information for warranty and guaranty
6 purposes, and that person was Dale Russell.

7 The pictures taken charged in this case were taken
8 at various times in 2004 as shown by the ExEf data embedded
9 into the pictures. Jane Doe 1, again known as Jane Doe 1 in
10 the indictment, was born in 1992, and was in sixth and seventh
11 grades during the calendar year of 2004.

12 Jane Doe 2, known as Jane Doe 2 in the indictment,
13 was born in 1994, and was in fourth and fifth grades during
14 the calendar year 2004. The girls are now in 10th and 12th
15 grades.

16 At the end of this trial, the Government expects
17 that one main issue will be the content of the pictures and
18 whether they are illegal, as the definition provides to us
19 under federal law.

20 The Government does not expect for Dale Russell to
21 contest that he took the pictures. Rather, the parties will
22 largely be arguing about the nature of the content of the
23 pictures.

24 At the end, the Government expects to request a
25 verdict of guilty as to each of the four counts. Thank you.

1 THE COURT: Thank you, Miss Helart.

2 Mr. McKinley? Ms. Cook?

3 MS. COOK: Yes, Your Honor. Good afternoon. May it
4 please the Court, Counsel.

5 Mr. McKinley and I will be representing Dale Russell
6 during the trial. And during the trial, you'll have an
7 opportunity to learn about Dale and his life.

8 Dale grew up in the Indianapolis area. He went to
9 school in this area. He worked a variety of jobs here. And
10 he raised his family in this and the surrounding counties.

11 The evidence will show that he has had a lifelong
12 love of photography. And his love of photography began when
13 he got his first camera at the age of nine.

14 By the time he was 11 years old, he was developing
15 his own film and printing his own pictures. And that love of
16 photography and interest in photography followed him into high
17 school. He attended Manual High School here in Indianapolis
18 and eventually graduated from that school.

19 While he was in high school, he was the photographer
20 for the school newspaper, and he worked as a photographer for
21 the yearbook. Following his graduation from high school, he
22 took a photo journalism class at Ball State University because
23 he intended to pursue photography as a career.

24 He then opted to study engineering at IUPUI, but
25 after one semester, because of his economic circumstances, he

1 had to leave college and go to work at RCA. And he continued
2 to work at RCA for a couple of years until there was an
3 economic downturn and a reduction in force when he lost his
4 job.

5 When he was laid off, he continued to pursue his
6 photography. It was a hobby for him. But in addition to
7 being his hobby, he also began to use his photography as a way
8 to earn additional money. Although he was employed at a
9 variety of jobs during this period of time, he began taking
10 portrait shots of people and he began taking sports shots. He
11 would travel around to different sporting events and take
12 photographs.

13 By the age of 24 or 25, he returned to his studies
14 at IUPUI, this time with a major in sports studies, and he
15 began teaching gymnastics in the area.

16 This time while he was a student at IUPUI, he was a
17 member of the campus photography club and a photographer for
18 the student newspaper. It was around this time that, in
19 addition to considering photography as his hobby and as a way
20 to make some extra money, he also began to regard it as a
21 means of artistic expression.

22 He completed a photography workshop at the Herron
23 Art School, and then he transferred to Indiana University in
24 Bloomington so that he could take classes at the School of Art
25 in Bloomington. He worked weekends while he was initially in

1 Bloomington at a photography studio.

2 He eventually graduated from Indiana University, but
3 with a degree in physical education and an emphasis in
4 gymnastics.

5 In 1990, when he was 29 years old, he married Dawn
6 Russell who would become the mother of his children. And over
7 the next four years, Dawn and Dale had three children. [REDACTED]
8 was born in 1991; Jane Doe 1, the oldest daughter, girl, was
9 born in 1992; and Jane Doe 2, the youngest, was born in 1994.

10 During the years when his children were young, Dale
11 had a succession of different jobs, some lasting longer than
12 others, some where he worked for other people in the
13 community, and some where he was basically self-employed.

14 During this period of time, he worked for Master
15 Lab, a photography studio. And during all of these years
16 while he was working at these various jobs, his interest in
17 photography continued. It provided him with an occasional
18 source of money, but more often, it was his hobby.

19 The evidence will be that over the years that Dale
20 was interested in photography, he has taken thousands of
21 photographs, tens of thousands of photographs. And his
22 favorite subject consistently over all the years that he has
23 taken photographs has been people. Since his marriage and
24 since the birth of his children, the people that he
25 photographed most often have been his family and his children.

1 Many times, the photographs that he took got thrown
2 into boxes, and later on when photography became digital, they
3 were saved on CDs or DVDs. But occasionally, he took pictures
4 that he thought were worthy of showing, and they were entered
5 in various art shows in the community. And he's even won
6 awards for some of those photographs that he's made.

7 The photographs that he has taken both of his
8 family, his children, and other individuals not in his family,
9 have included photographs of persons who were clothed,
10 partially clothed, and in some cases, nude.

11 Dale has photographed his children their entire
12 lives from the time that they were infants. As long as he has
13 been around them, he has photographed them. In 1996, when he
14 and Dawn separated, he was working part-time and supplementing
15 his income with some high-end portraiture work.

16 He also supplemented his income by traveling to
17 sporting events, gymnastics tournaments, cheerleading
18 contests, and he would take photographs at these sporting
19 events. He would hand out his business card to people who
20 attended the event and offer to print the photographs for them
21 and sell them. And he made a little extra money that way.

22 Around this time, in the late 1990s, he began a
23 child modeling agency called Kid Model. He photographed
24 children, not his children initially, but other people's
25 children. And he received photographs from other parents who

1 had photographed their own children or had them professionally
2 photographed. And from those photographs which he compiled,
3 he produced brochures. And those brochures were sent out to
4 retailers in the hope of attracting the attention of a Kohl's,
5 a Target, or a Sears who might be interested in using some of
6 the children in the brochures as models.

7 Dale's expectation, of course, was that he might be
8 the person who sparked the modeling career of one of these
9 children, which would, of course, represent income to him as
10 well as income to the children.

11 After about a two-year period of an acrimonious
12 separation from his wife, Dawn, his divorce was finalized in
13 1998. At that time, he was working at Spectrum Sports in
14 Carmel, and he was continuing with this freelance modeling
15 agency.

16 You're going to hear that in the year 2000, he met
17 his current wife, Betsy. And it was around the same time that
18 the modeling agency that he had established went online as a
19 way of attracting more businesses and more clients, hopefully
20 expanding the distribution of the modeling information and
21 attracting more income both for himself and for the models.

22 In that year, 2002, his own daughters were then 8
23 and 10 years old. And it was around that time that he began
24 shooting photographs of them specifically for the purpose of
25 creating modeling sites for each of them. And he did this

1 with their permission.

2 The modeling sites that he established for them were
3 online, and like the modeling sites for other children, they
4 did not contain the true names of the children who were
5 pictured on the sites for safety reasons.

6 All of the children who were depicted in these
7 modeling sites, including his two daughters, were clothed.
8 They were wearing the types of clothing that you would expect
9 children who model for various retail establishments to wear:
10 dresses, costumes, shorts, bathing suits, the kind of clothing
11 that's sold by the target businesses, Sears, Target, Kohl's.

12 He created the websites for his daughters and he
13 maintained the websites for his daughters. If he thought that
14 the websites attracted inappropriate attention, he removed
15 photographs from them. The models on those websites,
16 including his daughters, were not unlike the models in various
17 teen magazines at the time.

18 And with these modeling websites, Dale earned small
19 amounts of money, and those small amounts of money were shared
20 with his daughters as they were earned, part going into an
21 educational account for the two of them together, part given
22 directly to them.

23 And it was the year or so after these modeling sites
24 were online that Jane Doe 1, the older daughter, showed her
25 modeling site or provided information about it to a school

1 friend, who eventually told a parent, who told a school
2 counselor, who as you've heard called Jane Doe 1's mother,
3 Dawn, and talked to her about the existence of the website.

4 We expect to hear Dawn's testimony that she saw the
5 photographs from the website and that she didn't approve of
6 the photographs from the website. But I think you'll also
7 hear that the photographs that she saw depicted the girls
8 clothed.

9 Now, the discovery of those websites led to the
10 investigation that has culminated in this prosecution, and
11 eventually it led to the loss of Dale's contact with his
12 children.

13 In the course of this trial, you're going to learn
14 that Dale has a lifestyle with his wife, Betsy, that is
15 different than the lifestyles that many of us lead. He and
16 his wife, Betsy, are naturists, or nudists. At times, they
17 have been members of a national organization of naturists or
18 nudists; folks who believe that clothing should be optional in
19 their own home or at special resorts that are reserved for
20 people who belong to the organization or who pursue a naturist
21 or nudist lifestyle.

22 This may not be a lifestyle that you or I would
23 choose for ourselves or our family, but the evidence is going
24 to be that there is a segment of our population that chooses
25 that lifestyle, and there's nothing criminal about it.

1 When Dale's children visited him and his home with
2 Betsy, there are times when they were clothed in the home and
3 times when they were naked in the home; times when they were
4 clothed when they went on vacation, and times when they
5 vacationed at resorts and beaches which were set aside for
6 persons for whom clothing was optional.

7 Dale will not deny that he has photographed his
8 girls at times when they were naked. The photographs that he
9 took of them when they were naked are a small percentage of
10 the total photographs that he has taken of them throughout
11 their lives.

12 You'll have an opportunity to view the images which
13 the Government has charged. And you will learn that the
14 Government selected those images from among thousands of
15 photographs that Dale created.

16 The images that they chose depict Dale's
17 daughters, Jane Doe 1 and Jane Doe 2, either nude or partially
18 nude. And as you examine the photographs, you may not like
19 them. You may find that one of the images or more than one of
20 the images are unsettling or upsetting to you, but these
21 images were not created for public viewing. They were created
22 for family viewing. And I would ask that as you look at these
23 photographs, you keep an open mind as you look at the
24 photographs and listen to the evidence because the government
25 in this case has the burden of proof.

1 The burden of proof that they have in this case is
2 the highest standard recognized in the law, and that is proof
3 beyond a reasonable doubt. They are required to prove each
4 element of each of the charged offenses considered
5 individually beyond a reasonable doubt.

6 That means that you will examine the photographs or
7 photograph of each count individually in order to make a
8 determination as to whether the Government has carried its
9 burden of proof beyond a reasonable doubt.

10 The fact that a photograph in a particular count may
11 depict a naked child does not make it a violation of the law.
12 Nudity in a photograph of a child is not by itself a crime.
13 In order for the Government to prove that Dale violated the
14 law, you must find beyond a reasonable doubt with respect to
15 each photograph or group of photographs that three elements
16 are present.

17 What I've put on the projector is a portion of an
18 instruction which contains the three elements that the
19 Government must prove beyond a reasonable doubt, and I've
20 highlighted the first and third element.

21 THE COURT: You need to specify that this is not the
22 Court's instruction.

23 MS. COOK: This is not the Court's instruction.

24 THE COURT: I have not instructed you on these
25 elements.

1 MS. COOK: But we believe that the instructions will
2 include three elements that the Government must prove beyond a
3 reasonable doubt. And in this proposal, I have highlighted
4 the first and the third element because I want to speak to
5 those first.

6 The first element that the Government has to prove
7 beyond a reasonable doubt is that at the time the visual
8 depictions were produced, Jane Doe 1 and Jane Doe 2, that
9 being Jane Doe 1 and Jane Doe 2, were each below the age of 18
10 years.

11 Now, I'm going to tell you at this point that this
12 element is not in dispute. We agree with the age of the
13 girls. There's not going to be any disagreement about the
14 first element.

15 The third element that the Government will have to
16 prove beyond a reasonable doubt is that either the visual
17 depiction was produced using materials that have been shipped
18 or transported in interstate or foreign commerce, or the
19 defendant knew or had reason to know that such visual
20 depiction would be transported in interstate or foreign
21 commerce or mailed, or the picture itself was transported in
22 interstate commerce across state lines.

23 And I will tell you that with respect to this third
24 element, there is not going to be any dispute. There's no
25 disagreement between the defense and the Government with

1 respect to the third element.

2 It's the second element that will be in dispute
3 during the course of this trial. It's the second element that
4 the Government will have to prove beyond a reasonable doubt
5 with respect to each charged photograph or group of
6 photographs.

7 And the second element provides that the defendant
8 employed, used, persuaded, induced, enticed or coerced Jane
9 Doe 1 and Jane Doe 2, again Jane Doe 1 and Jane Doe 2, to
10 engage in sexually-explicit conduct for the purpose of
11 producing a visual depiction of such conduct. It's the second
12 element that Dale Russell emphatically denies.

13 You might ask what does it mean to engage in
14 sexually-explicit conduct.

15 THE COURT: Counsel, these instructions are not
16 approved.

17 MS. COOK: It's the Government's tendered ones, Your
18 Honor.

19 THE COURT: But the Court hasn't made a ruling on
20 them.

21 MS. COOK: I understand.

22 Sexually-explicit conduct has a specific meaning,
23 and that specific meaning is --

24 THE COURT: This is your opening statement?

25 MS. COOK: Yes, it is, Your Honor.

1 THE COURT: All right. So let's keep it with the
2 opening statement with respect to what you expect the evidence
3 to show. And after we get to the place where the instructions
4 are given by the Court, you can go through the instructions
5 and argue those. But right now, it's just the blueprint of
6 what's coming ahead, not argument, Counsel.

7 MS. COOK: All right. Thank you.

8 We -- well, we expect that the evidence will not
9 show that the photographs depict sexually-explicit conduct.
10 We do not believe that the Government is able to carry its
11 burden of proving that the photographs depict what the law
12 defines as sexually-explicit conduct.

13 At the end of the evidence, we are going to be
14 asking you to return a verdict of not guilty with respect to
15 each of the charged offenses. And I would ask that as you
16 listen to the evidence that comes in, you keep an open mind
17 and that you keep an open mind during the presentation of the
18 defense case as well as the Government's case.

19 Thank you.

20 THE COURT: Thank you, Miss Cook.

21 Miss Helart, the Government may call its first
22 witness.

23 MS. HELART: If I might tender to the Court an
24 exhibit list at this point?

25 THE COURT: Thank you. Get one for Miss Schneeman.

1 MS. HELART: Yes.

2 THE COURT: Thank you.

3 MS. HELART: The Government would call Dawn Russell.

4 THE COURT: All right.

5 Good afternoon, Miss Russell. Come around that way
6 towards the witness stand, please. Before you pull up a
7 chair, remain standing, raise your right hand and be sworn by
8 the Clerk.

9 **DAWN RUSSELL, PLAINTIFF'S WITNESS, SWORN**

10 **DIRECT EXAMINATION**

11 THE COURT: You may be seated.

12 BY MS. HELART:

13 Q Good afternoon. Could you please state your name?

14 A Dawn Russell.

15 Q What city do you live in now?

16 A Greenfield.

17 Q When did you --

18 THE COURT: Greenfield, Indiana?

19 THE WITNESS: Yes.

20 BY MS. HELART:

21 Q When did you move to Greenfield approximately?

22 A Approximately 2004.

23 Q Where had you lived just before you moved to Greenfield?

24 A I lived in Indianapolis in Braeburn Village Apartments.

25 Q Do you know the cross streets of Braeburn Village

1 Apartments in Indianapolis?

2 A 21st Street and Franklin Road.

3 Q On the east side?

4 A Yes.

5 Q When you lived at the Braeburn Village Apartments, did
6 anyone else live there also that you knew?

7 A Yes, Dale Russell.

8 Q Who is he?

9 A Dale is my ex-husband. He's sitting at that table with it
10 looks like a black suit on.

11 Q All right.

12 MS. HELART: And let the record reflect that she's
13 pointed to the direction of Dale Russell who is wearing a
14 black suit.

15 THE COURT: The record so reflects.

16 MS. HELART: At this time, we have a stipulation
17 we'd like to read into the record, Your Honor. It's
18 Exhibit 6.

19 THE COURT: Okay, what is the stipulation?

20 MS. HELART: It regards the Braeburn Village
21 Apartments and when Mr. Russell lived there.

22 THE COURT: All right. Let me explain to you about
23 stipulations. I mentioned it in my preliminary instructions,
24 but an additional word might be appropriate here. When the
25 parties stipulate to something, they mean that they agree to

1 it. So it's not in dispute. And you can take whatever the
2 facts are that are encompassed within that stipulation as
3 true. You don't have to hammer out a disagreement when it's
4 time to deliberate on that.

5 What weight you choose to give to it -- I'm spelling
6 weight, W-E-I-G-H-T -- what difference it makes, what effect
7 it has on your deliberations, even when it's not in dispute,
8 is still up to you to decide. You'll have to decide that when
9 you deliberate. But this matter will come into evidence
10 without disagreement as a stipulation. And so I will admit
11 Exhibit 6 and you may read the stipulation to the jury.

12 (Plaintiff's Exhibit 6 received in evidence.)

13 MS. HELART: Thank you. And if I could publish it
14 on the document camera?

15 THE COURT: Yes, and a word about that. Those
16 monitors pull out from where they are now so you can get them
17 a little closer if you need to get your bifocals adjusted.
18 That's what I have to do. And they are positioned to be
19 located between each two of you so that you can see them
20 easily.

21 So adjust them so there's no glare -- sometimes off
22 the window back there, we get some glare -- so that you can
23 see these things and read along with us.

24 And finally, a word of explanation, all of these
25 exhibits will come to the jury room and be there with you and

1 available to you when you deliberate. So you don't have to
2 memorize what's in them, or try to absorb all the many
3 details. Follow the questions as the lawyers ask the
4 questions, and then you'll remember what it's about when you
5 have the documents and the exhibits there to deliberate on.

6 Now you may do it.

7 MS. HELART: Thank you. The United States by
8 counsel --

9 THE COURT: Can you enlarge that any because --

10 MS. HELART: Yes.

11 THE COURT: -- for my eyes, it's a little small.
12 How about you?

13 There, that's better.

14 MS. HELART: The United States, by counsel, Gayle L.
15 Helart, and A. Brant Cook, and Defendant, Dale Russell, by and
16 through his counsel, James C. McKinley, hereby stipulate and
17 agree as follows:

18 Dale Russell lived at the [REDACTED]
19 [REDACTED], [REDACTED], Indianapolis, Indiana,
20 from approximately August 20, 2003, until approximately
21 August 25, 2004. The forwarding address and telephone number
22 provided by Dale Russell was 664 Marana Drive, Carmel,
23 Indiana, (317) 705-9896.

24 By affixing their signatures hereto, the Government
25 and defendant's counsel, with the consent of the defendant,

1 agree to the stipulation, and that the stipulation may be
2 entered into evidence during the course of this trial. Signed
3 Gayle L. Helart, A. Brant Cook, Dale Russell, and James C.
4 McKinley.

5 THE COURT: Okay.

6 BY MS. HELART:

7 Q Ms. Russell, when were you married and divorced from Dale
8 Russell?

9 A We were married from approximately 1990 until 1998.

10 Q How did you first meet him?

11 A We worked together.

12 Q Where?

13 A Master Lab.

14 Q Did you both like photography?

15 A Yes.

16 Q Have you kept up with photography?

17 A No, not really.

18 Q As far as you know, did Mr. Russell maintain an interest
19 in photography?

20 A As far as I know, yes.

21 Q Did the two of you have children together?

22 A Yes.

23 Q How many children and what are their genders?

24 A We had three children, one son and two daughters.

25 Q When was your son born?

1 A March 15th, 1991.

2 Q When were your two daughters born?

3 A May -- August 8th, 1992, and May 15th, 1994.

4 Q May what?

5 A Fifteenth.

6 Q And your daughter who was born in 1992, what is her name?

7 A Jane Doe 1.

8 Q And what is your daughter who was born in May of 1994,
9 what is her name?

10 A Jane Doe 2.

11 MS. HELART: At this point, the Government has
12 Exhibit 8, another stipulation to read into the record.

13 THE COURT: You may read your stipulation.

14 MS. HELART: "The United States by counsel, Gayle
15 L. Helart and A. Brant Cook, and defendant, Dale Russell, by
16 and through his counsel, James C. McKinley, hereby stipulate
17 and agree as follows:

18 "A minor is defined as a person less than 18 years
19 old. Jane Doe 1 was born in 1992. Jane Doe 2 was born in
20 1994. In 2004, when the crimes were alleged to have been
21 committed, Jane Doe 1 was 11 to 12 years old. In 2004, Jane
22 Doe 2 was 9 to 10 years old. Dale Russell knew the ages of
23 Jane Doe 1 and Jane Doe 2.

24 "By affixing their signatures hereto, the Government
25 and defendant's counsel, with the consent of the defendant,

1 agree to this stipulation, and that the stipulation may be
2 entered into evidence during the course of the trial in this
3 case.

4 "Signed Gayle L. Helart, A. Brant Cook, Dale
5 Russell, and James McKinley.

6 THE COURT: Your stipulation is admitted.

7 (Plaintiff's Exhibit 8 received in evidence.)

8 BY MS. HELART:

9 Q For several years after the divorce in 1998, did you and
10 Mr. Russell go to court for orders regarding things like child
11 support and child visitation?

12 A Yes, we did.

13 Q On October 19th, 2004, did you go to Family Court
14 regarding a specific topic?

15 A Yes, we did.

16 Q What was that court hearing originally scheduled for?

17 A It was scheduled for child support.

18 Q Did that hearing turn into something else?

19 A Yes.

20 Q Within a week of October 19th, 2004, had you received a
21 call that was unusual to you?

22 A Yes, I did.

23 Q Who did you receive the call from?

24 A It was from Kim Kyle, the middle school counselor in
25 Greenfield.

1 Q Who was she in relationship to your family?

2 A She was just the school counselor. She wasn't really a
3 relationship, the school counselor.

4 Q And which school had the relationship with your family?

5 A Greenfield Central, or it was Greenfield Middle School.

6 Q Which of your children attended that school?

7 A Jane Doe 1 and Jane Doe 2.

8 Q At that time?

9 A Yes.

10 Q What was the call in relationship to? What was the nature
11 of the call?

12 A The counselor called to say that they had received
13 information of some photographs that my daughters had been on
14 some pictures. My daughter had been on a website, and they
15 wanted to talk to me about it.

16 Q Did you respond to the school with that call?

17 A Yes.

18 Q Did the school officials show you anything? Did you see
19 any photographs?

20 A Yes, they had a packet of papers with several photographs
21 on each sheet of paper, in color, of the pictures as they were
22 on the websites.

23 Q Did you provide those pictures to your lawyer who was
24 representing you in Family Court?

25 A Yes.

1 Q Were those pictures attached to a pleading, a document
2 that was in front of the court?

3 A Yes.

4 Q And have you seen Exhibit 12, pages one through 27, before
5 you came here to testify today?

6 A Yes.

7 Q What is Exhibit 12?

8 A They're pictures of the internet websites of my daughters.

9 Q And do you recognize them for a specific reason?

10 A Yes, because --

11 Q Why do you recognize them?

12 A Yes, they're my daughters.

13 Q And did you see these pictures at the Greenfield school
14 the day that they called you?

15 A Yes, the pictures I saw at the Greenfield school were
16 actually in color. Those are in black and white, but they are
17 the exact same pictures.

18 Q And your attorney had attached these to the pleading and
19 we simply took a copy off of that; is that correct?

20 A Right.

21 MS. HELART: We'd ask that Exhibit 12 be admitted.
22 Exhibit 12, specifically pages 1 through 27.

23 THE COURT: Any objection?

24 MS. COOK: No, Your Honor.

25 THE COURT: Exhibit 12 is admitted.

1 (Plaintiff's Exhibit 12 received in evidence.)

2 BY MS. HELART:

3 Q I'm going to hand you Exhibit 12, and if you could
4 describe what you see in these pictures in terms of who are
5 the people depicted?

6 A These are my daughters, Jane Doe 1 and Jane Doe 2.

7 Q What name is associated with your daughter, Jane Doe 1?

8 A Kasey.

9 THE COURT: Spelled C-A-S-E-Y?

10 THE WITNESS: K-A-S-E-Y.

11 THE COURT: K-A-S-E-Y.

12 BY MS. HELART:

13 Q What is the full website name if it's ever shown?

14 A I think it's kaseymodel.com. Yeah, kaseymodel.com.

15 Q Who else is depicted?

16 A Jane Doe 2.

17 Q Does she have her own name associated?

18 A Hers was October.

19 Q Do you see her full name website?

20 A Yes, it's -- it is in here. I don't see it right now.

21 Q And do you see any other individuals depicted?

22 A Yes, there's another girl in here. Her name, under here,
23 is called Annabelle.

24 Q Do you recognize that girl?

25 A She is Dale's stepdaughter.

1 Q He is currently married?

2 A As far as I know, yes.

3 Q And who's the -- who is the person that he is married to?

4 A Her name is Betsy.

5 Q And so the person depicted there is Betsy's daughter?

6 A Right.

7 Q Her name is Annabelle as depicted there. Is that her real
8 name?

9 A No.

10 Q In the pictures showing your daughters, do you recognize
11 the clothing that they're wearing?

12 A No.

13 Q Is that anything that came from your house where they
14 lived with you?

15 A No.

16 Q Can you describe for the jury what kinds of clothing they
17 are wearing in those pictures and which daughters associated
18 with what you're looking at?

19 A There's pictures here of Jane Doe 1 in bra and panties.
20 Some of them are thong underwear; swimsuit, pajamas.

21 Q What about Jane Doe 2?

22 A Same thing, bra and panties, swimsuit.

23 Q As their mom, did you want a website up showing pictures
24 like that of your daughters?

25 A No.

1 Q Had you ever given permission for those pictures to have
2 been taken or up on a website?

3 A No.

4 Q During the hearing on October 19th, 2004, were you present
5 for that hearing?

6 A Yes.

7 Q Did Mr. Russell admit to anything regarding the website
8 information that you see in Exhibit 12?

9 A Yes.

10 Q Like what you had received from the school?

11 A Yes. He said that he took the pictures.

12 Q Did he talk about running the websites?

13 A Yes, he did.

14 Q With respect to the websites and anything that the judge
15 said that day, what did the judge say regarding the websites?

16 MS. COOK: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MS. HELART:

19 Q Did you make a request of the judge during that hearing
20 regarding the websites?

21 A Yes, I asked that the websites be immediately shut down.

22 Q Do you know if that happened?

23 A Yes, I believe it did.

24 Q Had you known before the October 19th, 2004 hearing that
25 Mr. Russell had put up websites involving Jane Doe 1 and Jane

1 Doe 2?

2 A No.

3 Q Had he ever talked about this with you?

4 A No.

5 Q Before you got the call from the school, had you heard it
6 from Jane Doe 1 herself?

7 A She mentioned once that "I have a website," but I -- you
8 know, that she had a website, but I didn't think to look into
9 it because I had already told Dale I didn't want any kind of
10 personal information, pictures, or anything on any kind of
11 website. And I assumed that he respected those wishes. So I
12 assumed that when she said she had a website, that it was
13 something childlike and simple.

14 Q Did Jane Doe 1 -- I'm sorry, did Jane Doe 2 ever disclose
15 that she had a website before October 19th, 2004?

16 A No.

17 Q Do you recall Jane Doe 1 ever receiving a particular theme
18 of things for a Christmas present one year?

19 A Yes.

20 Q What particular theme of things did she get?

21 A SpongeBob.

22 Q Who did she get that from?

23 A From Dale.

24 Q After the divorce, do you ever recall finding out about
25 bank accounts in your daughters' names that you had not known

1 about?

2 A Yes.

3 Q Do you know who set those bank accounts up?

4 A Dale.

5 Q Did you ever see -- when your daughters would return home
6 from visiting Dale, did you ever see your daughters, either
7 daughter, with any amount of money that seemed unusual
8 given what you knew their resources were?

9 A They didn't bring any large amounts of money home to my
10 house, but they did talk about things that they had received
11 while they were with Dale.

12 Q Did you see these things?

13 A Sometimes, but not very often.

14 Q Did you ever see clothing back at your house that you
15 hadn't seen them dressed in before?

16 A Yes.

17 Q Did you ever see things like thongs or bikinis or any of
18 the things that you saw in these pictures?

19 A No.

20 MS. HELART: Thank you, Your Honor. Nothing else
21 right now.

22 THE COURT: All right. Cross-examine, Ms. Cook.

23 **CROSS EXAMINATION**

24 BY MS. COOK:

25 Q Miss Russell, as I understand it, you and Dale were

1 divorced in 1998?

2 A Yes.

3 Q And that divorce followed a separation of approximately
4 two years?

5 A Yes.

6 Q Would it be fair to say that the divorce was not a
7 particularly amicable one?

8 A Yes.

9 Q And that during the period of your separation from Dale in
10 the years following, there was very little contact between you
11 and Dale?

12 A No, I wouldn't say that. We had adequate contact because
13 the children had to be -- you know, he'd pick them up for
14 visitation. And also because Dale took me to court, we were
15 in court a lot in the two years.

16 Q You testified that there was a point in time where Jane
17 Doe 1 mentioned to you that she had a website?

18 A Yes.

19 Q And you didn't ask her to show you the website?

20 A No, we -- our computer was broken at the time, and I
21 didn't really think it was that bad.

22 Q And you didn't follow up to look at it?

23 A No.

24 Q Or make any other inquiries at a later time when your
25 computer was operable?

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1 A No.

2 Q So when the school called you and indicated that they had
3 some information about a website that your daughter's
4 photographs were on, you went to the school?

5 A Yes.

6 Q And met with a counselor?

7 A Yes.

8 Q And the counselor gave you photographs that you understood
9 had come from the websites?

10 A No, the -- when I arrived at the school, there was Kim
11 Kyle, the counselor there, but there was also Greenfield
12 police department. There was also Child Protective Services,
13 Laura Gentry representing Child Protective Services. There --

14 THE COURT: Tap that and see if it's still going
15 (Indicating).

16 Yeah, it's going.

17 A The police department are the ones who showed me the
18 photographs.

19 Q And was it your understanding that the photographs which
20 you received all came from the two websites in question?

21 A Yes.

22 Q Was it your understanding that the individuals who gave
23 you the website -- who gave you the photographs -- were giving
24 you all of the photographs which came off the website?

25 A No, I don't believe it was all the photographs.

1 Q Well, did you ever follow up to look and see whether there
2 were any other photographs on the websites?

3 A I personally did not view the websites myself.

4 Q Did you ever ask anyone else to follow up and retrieve
5 from the websites any additional photographs which might exist
6 on them?

7 A There was an investigation so I trusted the investigators
8 to be following up.

9 Q My question to you was: Did you ever ask anyone to
10 retrieve for you any additional photographs which might have
11 been on the websites?

12 A No.

13 Q Now, when you viewed the photographs from the websites --
14 and let me ask you this: Are the photographs which have been
15 introduced into evidence as Government's Exhibit -- I'm sorry,
16 was that 1?

17 MS. HELART: 12.

18 Q -- 12, were those all of the photographs which you
19 received when you went to the school?

20 A There were other photographs that I was given, but they
21 were of other girls.

22 Q With respect to your girls, are the photographs that are
23 contained in Government's Exhibit 12 all of the photographs
24 which you received? And I understand these are copies of the
25 originals.

1 A Right. I don't know because I was given a large packet.
2 I didn't examine each photograph. It was really hard to look
3 at. So I can't really answer that they were all of the
4 photographs.

5 Q As you sit here today, you don't know of or remember any
6 specific photographs that are missing from Government's
7 Exhibit 12, do you?

8 A No.

9 Q All right. And as you look at the photographs, it's your
10 opinion, isn't it, that the girls are effecting modeling-type
11 poses or positions?

12 A To someone's opinion maybe. I wouldn't call them modeling
13 poses.

14 Q Ms. Russell, do you remember having testified before a
15 grand jury on January the 8th of 2008?

16 A Yes.

17 Q Do you remember being placed under oath --

18 A Yes.

19 Q -- prior to your testimony?

20 A Yes.

21 Q And being asked questions by Ms. Helart?

22 A Yes.

23 Q And do you recall page 10, Ms. Helart asking you.

24 Question: "With respect to your girls, and
25 they were both dressed in clothing that would you, as their

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1 mom, say that that was inappropriate clothing?

2 And your answer: "It would be appropriate
3 under clothes and not being photographed, but they were in
4 modeling-type positions."

5 Do you recall having given that answer?

6 A No, not specifically.

7 Q Would it refresh your recollection to see a copy of your
8 grand jury transcript?

9 A Yes.

10 MS. COOK: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MS. COOK:

13 Q I'm handing you what I'll represent and what is entitled
14 "Regular Grand Jury, Dawn Russell, page 10." And direct
15 your attention to --

16 THE COURT: Miss Cook, excuse me, stand with your
17 back to the wall, and then you can speak to the witness over
18 your shoulder, but the jury hears too.

19 MS. COOK: All right.

20 BY MS. COOK:

21 Q Direct your attention to lines 14 through 16, ask if you
22 would read that to yourself?

23 A (Witness complied.)

24 Q Okay. Having read that statement, does that refresh your
25 recollection that you testified before the grand jury that

1 they were in modeling-type positions?

2 A Yes.

3 Q Now, you testified that on an occasion, one of your
4 daughters, and correct me if I'm wrong, but I believe it was
5 Jane Doe 1, had received from her father gifts of items with a
6 SpongeBob theme?

7 A Yes.

8 Q She brought those items home?

9 A No.

10 Q She told you about having received those items?

11 A Yes.

12 Q Did she tell you what those items were?

13 A She listed a large amount of SpongeBob items. I mean,
14 several, several things, a lot.

15 Q Did she tell you, for example, that she had a SpongeBob
16 poster?

17 A I don't remember the specifics, but it was a lot of
18 things.

19 Q Do you recall any of the specific items which she told you
20 she had received?

21 A I think there were some bed -- like the bed clothing, the
22 comforter, things like that.

23 Q So a sheet set?

24 A Yeah.

25 Q Something like that with a SpongeBob theme?

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1 A Right.

2 Q And it wasn't your opinion that a SpongeBob theme was
3 inappropriate for Jane Doe 1, was it?

4 A Right.

5 Q With respect to the bank account or accounts that you
6 learned were in the girls' name, did you learn that there was,
7 in fact, an educational account that had been established for
8 them?

9 A No.

10 Q Did you learn that there was an account in their names
11 that had a sum of money in it?

12 A No. I didn't have access to any dollar amount.

13 Q But you knew that there was an account in their names?

14 A Right.

15 Q And during the course of the hearings that you
16 participated in, was there testimony that would indicate that
17 that account had money in it?

18 A Yes.

19 Q And that that money was to be used for educational
20 reasons?

21 A I don't know why they were set up. I don't have -- I
22 mean, I assume that's what maybe Dale said, but --

23 Q All right.

24 MS. COOK: I have no further questions.

25 THE COURT: Redirect?

1 MS. HELART: No redirect, Your Honor.

2 THE COURT: Thank you very much. You may step down.
3 Watch your step as you go. You may leave the exhibit there
4 and counsel will take it.

5 Your next witness, please.

6 MS. HELART: Thank you. Before we call our next
7 witness, Your Honor, I have one more stipulation to admit.

8 THE COURT: All right. You may.

9 MS. HELART: It's Exhibit 5.

10 "The United States, by counsel, Gayle L. Helart and
11 A. Brant Cook, and defendant, by and through his counsel,
12 James C. McKinley, hereby stipulate and agree as follows:

13 The images charged in Counts 1 and 2 of Jane Doe 1,
14 and Counts 3 and 4 of Jane Doe 2, were located on a computer
15 drawing and investigation of a Canadian citizen unrelated to
16 the current investigation of Dale Russell in approximately
17 February 2007 in Canada, and subsequently sent to the National
18 Child Exploitation Coordination Center for NCECC, 890 Taylor
19 Creek Road, Ottawa, Ontario, K1A0R2. The information from
20 NCECC was subsequently related to law enforcement officers of
21 the Indiana Internet Crimes Against Children Task Force
22 Officers for use during the current investigation of Dale
23 Russell.

24 By affixing their signatures hereto, the Government
25 and defendant's counsel, with consent of the defendant, agree

1 to this stipulation and that the stipulation may be entered
2 into evidence during the course of the trial in this case.
3 Signed Gayle L. Helart, A. Brant Cook, Dale Russell, and James
4 C. McKinley."

5 THE COURT: Your stipulation is admitted.

6 MS. HELART: We would call Jane Doe 1.

7 THE COURT: There's an exhibit on the desk there.
8 Maybe, Mr. Cook, you want to get it.

9 Miss Russell, come right across there and over here
10 to the witness stand. Before you take the chair, remain
11 standing, raise your right hand and be sworn by the clerk.

12 **JANE DOE 1, PLAINTIFF'S WITNESS, SWORN**

13 **DIRECT EXAMINATION**

14 THE COURT: You may be seated.

15 MR. COOK: May I proceed, Your Honor?

16 THE COURT: You may.

17 MR. COOK: Thank you.

18 BY MR. COOK:

19 Q Would you please state your name for the Court, spelling
20 your - both your first and last name for the court reporter?

21 A Jane Doe 1, [REDACTED].

22 Q Jane Doe 1, how old are you right now?

23 A Seventeen.

24 Q When is your birthday?

25 A [REDACTED].

1 Q I'm sorry, I missed that. [REDACTED]? I'm sorry, say it again,
2 please.

3 A [REDACTED].

4 Q You have kind of a low voice, so I ask that you try to
5 keep it up and speak into the microphone that's in front of
6 you.

7 What grade of school are you right now?

8 A I'm a senior.

9 Q So you're pretty close to graduation right now?

10 A Yeah.

11 Q Just a couple of months away?

12 A Uh-huh.

13 Q How do you feel about that?

14 A I'm excited.

15 Q Do you have any plans for after you graduate?

16 A I plan to go to IUPUI.

17 Q How are you doing grades-wise?

18 A As and Bs right now.

19 Q Do you get those As and Bs while also doing some school
20 activities as well?

21 A Yeah, I'm on the dance team.

22 Q What does the dance team, if you can describe that for us,
23 please?

24 A We have hip-hop and palm routines, and we compete on
25 Saturdays against other dance teams.

1 Q How many competitions do you do a year?

2 A About nine.

3 Q Jane Doe 1, which high school is it that you attend right
4 now?

5 A Greenfield Central High School.

6 Q So do you live in Greenfield now?

7 A Yes.

8 Q How long have you lived in Greenfield?

9 A For about five and a half years.

10 Q And while we're talking about Greenfield, it is
11 Greenfield, Indiana; is that correct?

12 A I'm sorry?

13 Q Is that Greenfield, Indiana, I assume?

14 A Yes.

15 Q Okay. I want to talk to you a little bit about your
16 family. With whom do you live right now?

17 A My mom and my sister.

18 Q What's your mom's name?

19 A Dawn Russell.

20 Q And how about your sister?

21 A Jane Doe 2.

22 Q Is Jane Doe 2 your little sister or big sister?

23 A My like younger sister.

24 Q How much younger than you is she?

25 A She's 15.

1 Q How's your dad's relationship right now?

2 A I'm sorry?

3 Q How's your dad's relationship right now?

4 A Good. Pretty close.

5 Q Do you have any other siblings?

6 A I have an older brother.

7 Q What's his name?

8 A [REDACTED].

9 Q How old is he right now?

10 A He's 18.

11 Q And does he live somewhere around you or elsewhere?

12 A He lives in the same apartment complex, I guess, but a
13 couple doors down.

14 Q So you, your mom and your sister live in the same
15 apartment complex as your brother, [REDACTED]?

16 A Right.

17 Q Who is your father, Jane Doe 1?

18 A Dale Russell.

19 Q Do you see your father, Dale Russell, in the courtroom
20 here today?

21 A Yes.

22 Q If you could just point him out and describe what he's
23 wearing?

24 A He's wearing black and tan.

25 MR. COOK: Your Honor, if the record can reflect

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1 that Jane Doe 1's identified the defendant, Mr. Russell?

2 THE COURT: The record so reflects.

3 BY MR. COOK:

4 Q Jane Doe 1, I want to talk to you about your relationship
5 with your father, Mr. Russell. Is your father still married
6 to your mother?

7 A No.

8 Q Do you know how old you were when they were divorced?

9 A I was three.

10 Q So do you have any memory of that at all?

11 A Not really.

12 Q Following the divorce when you were about three, which
13 parent did you primarily live?

14 A After that?

15 Q Yeah.

16 A We lived with my mom, and my grandma and grandpa.

17 Q And did that -- did you continue to live with your mom and
18 other siblings through the course of your life up to now?

19 A Yes.

20 Q Did you have visitation with your father for at least part
21 of your childhood?

22 A Yes.

23 Q Did that visitation arrangement stay the same or did it
24 change through time?

25 A It changed through time.

1 Q Okay. How old were you when visitation stopped?

2 A I was in 7th grade, so I was around 12.

3 Q So when you were around 12 or in 7th grade is when
4 visitation stopped?

5 A (Witness nodded head.)

6 Q When you did visitation with your father, was it normally
7 done with yourself and your two siblings or were there times
8 that you saw him just on your own?

9 A There were times that I saw him just on my own.

10 Q Was it normal practice, though, to go over with your
11 siblings for visitation?

12 A Yeah.

13 Q During the course of time that you had visitation with
14 your father, what were the places that he lived? He didn't
15 live in the same place the whole time, correct? Did he move a
16 couple times?

17 A Correct. He lived in -- he lived with his friend,
18 Mary Kay, for a while, and then he lived with Betsy and Amy in
19 Braeburn Village Apartments, and then he lived in Carmel in a
20 house.

21 Q I understand that we're looking back a little ways, but do
22 you know about how old you were when your father moved to the
23 apartments at Braeburn Village?

24 A Sixth grade.

25 Q So you were around 11 years old or so; is that correct?

1 A Yeah, 11.

2 Q And do you know about how old you were when he moved to
3 the house in Carmel?

4 A 12 or 13.

5 Q So a year or so later to your recollection?

6 A Right.

7 Q Now you've told us that your visitation with your father
8 ceased when you were about 12 or 13 years old. When is the
9 last time you saw your father before today?

10 A At a dance competition.

11 Q About how old were you at that dance competition? How
12 long ago was that?

13 A It was a couple years ago.

14 Q I want to look back to the time during which you did have
15 visitation with your father. How would you describe your
16 relationship with him as you were growing up?

17 A We were very close.

18 Q You were close?

19 A Yeah.

20 Q What kind of things did he and you and your siblings all
21 do together during those visits you had?

22 A We would hang out, go to parks.

23 Q Hang out, go to parks, normal kid-like things?

24 A Right.

25 Q Do you know where your father last worked during, I guess,

1 the last year or so of your visitation with him?

2 A At Master Lab and at Spectrum Gymnastics.

3 Q And so the jury knows, what was Master Lab?

4 A It's a photo studio.

5 Q And Spectrum Gym, what was that?

6 A It's a gymnastics gym.

7 Q And did you take part in gymnastics at Spectrum Gym?

8 A Yes.

9 Q And was your father involved in your instruction in
10 gymnastics there, or was someone else?

11 A I had a different coach, but he still helped me out.

12 Q Now you mentioned that your father worked at Master Lab
13 which is a photo studio. As you were growing up, was it your
14 understanding that your father had or was particularly
15 interested in photography?

16 A Yeah.

17 Q Did that interest become part of your relationship with
18 him?

19 A Yes.

20 Q So he'd take, I guess, just -- did it seem to you that he
21 took a little, a lot, or some other amount of pictures of you?

22 A He normally took a lot of pictures.

23 Q He took a lot of pictures of you.

24 When did he start taking pictures of you, just as
25 long as you can remember or is there a discrete time?

1 A As long as I can remember.

2 Q Did your father taking pictures of you, did that become
3 more, I suppose, formalized at any point in your relationship
4 with him?

5 A What do you mean by that?

6 Q I guess what I mean is did he take pictures just as you
7 guys were doing normal kid sort of things or were there
8 particular photo shoots that would occur?

9 A Usually it would be, like, any time, and then he started
10 doing photo shoots.

11 Q Okay. I want to talk to you about these photo shoots.
12 Describe to the jury what you mean by a photo shoot, what that
13 meant between you and your father?

14 A He would tell us what our theme was for the day, like
15 where we would go and pick out an outfit, and we would have a
16 shoot.

17 Q Were these pictures -- speaking generally, were these
18 pictures for the family or were these photo shoot pictures for
19 something else?

20 A They were for our website.

21 Q All right. How old were you when this talk about websites
22 began?

23 A I was 11 or 12.

24 Q 11 or 12 you said?

25 A Right.

1 Q And what was the, I suppose, the theme of the website? I
2 mean, was it just photographs, or were they modeling
3 photographs? What was that about?

4 A They were modeling photographs. Each set had a different
5 place and theme about it.

6 Q Whose idea was it for there to be modeling photographs of
7 you on a website?

8 A My dad's.

9 Q It was your dad's idea?

10 A Yes.

11 Q What were your thoughts on it?

12 A I thought it would be fun.

13 Q You thought it would be fun? Okay.

14 Did your father suggest reasons for why a modeling
15 website would be starting with you?

16 A Not really.

17 Q Did he run a modeling photograph site just of you or were
18 there other people that you knew with modeling sites also?

19 A My little sister had one, too, and my stepsister had one.

20 Q And your little sister's Jane Doe 2; is that correct?

21 A Yeah.

22 Q Who's your stepsister?

23 A [REDACTED].

24 Q And I take it by that your father at some point got
25 remarried?

1 A Yeah.

2 Q Do you know around when that was?

3 A I was around 12.

4 Q And what was his wife's name?

5 A Betsy.

6 Q So was [REDACTED] Betsy's daughter then who became your
7 stepsister?

8 A Yeah.

9 Q What was the name of the website that contained
10 photographs of you?

11 A Kaseymodel.

12 Q Where did the term "Kasey" come from?

13 A He made it up.

14 Q I'm sorry?

15 A My dad made it up.

16 Q He made it up? Okay.

17 And what was "Kasey"? Like, what's the point of
18 that name?

19 A It was a fake name 'cause he didn't want my real name on
20 there.

21 Q So it was a fake name for use for your website?

22 A Yeah.

23 Q Okay. It was a name that he came up with?

24 A Yeah.

25 Q At your particular website, were there photos just of you?

1 Were you, I suppose, the focus of that website?

2 A Yeah.

3 Q And what was your website called again?

4 A Kaseymodel.

5 Q I assume there's a dot com in there? Do you recall that?

6 A Yeah, dot com.

7 Q What kind of photographs were on the website?

8 A On the page, there was regular sets. Like, if you click
9 on each picture, it gives you a whole set.

10 Q Okay. And I suppose -- what kind of things do these
11 pictures depict? Were you wearing particular kinds of
12 clothing or anything like that?

13 A I would wear regular clothing, swimsuits, bra and
14 underwear.

15 Q So some of the pictures of you were actually you in a bra
16 and underwear?

17 A Yeah.

18 Q Okay. And some also in swimsuits?

19 A Right.

20 Q And I think you said some also you were clothed in them?
21 I suppose in regular, you know, shirts and pants and that sort
22 of thing; is that correct?

23 A Yes.

24 Q Did your sister also have a separate fake name that was
25 for her modeling site?

1 A Yes.

2 Q What was that name?

3 A "October."

4 Q What did your father say to you about your mother and
5 these websites?

6 A He didn't want my mom to find out, so he told us not to
7 tell her.

8 Q You were told not to tell your mother about the websites?

9 A Right.

10 Q Who supplied the clothing that you wore on the website
11 pictures?

12 A Most of them my dad did, but some of them I had already
13 had from my own closet.

14 Q Okay. So some of them were from your own closet, most of
15 them were provided by your father; is that correct?

16 A Yes.

17 Q How about the images in which you were in your underwear?

18 A I think those were already mine.

19 Q Did your father provide any kind of different underwear
20 than you normally wore?

21 A Yes.

22 Q What kind of underwear was that?

23 A Thong underwear.

24 Q Thong underwear you said?

25 A Yes.

1 Q Were you allowed to tell your mother about having that
2 kind of underwear?

3 A No.

4 Q How often did you do the photo shoots with your father for
5 the website and other stuff?

6 A Sometimes it was twice, every time we had a visitation.
7 Sometimes it was none at all. Sometimes it was just one.

8 Q And how would you know that images were to be for your
9 website? How did that come to your attention?

10 A He would say we have a shoot today and he would tell me
11 about it.

12 Q Who decided where a photo shoot would take place?

13 A Mostly my dad, but some of them were from me.

14 Q Okay. So mostly your dad, some of them were from you.

15 Did your father direct certain poses for you to take
16 or did you take them?

17 A My dad directed them. Most of them I would just do on my
18 own, but some of them he told me what to do.

19 Q So he would specifically direct some poses?

20 A Right.

21 Q And other times you would do your own poses?

22 A Right.

23 Q How did it come out that you had this website with
24 pictures of you, some wholly-clothed, some in underwear, some
25 in swimsuits? How did the kaseymodel.com website come to

1 anyone's attention?

2 A Come to my attention?

3 Q How did it come to anyone's attention outside of the
4 family?

5 A I told a friend at school. I wrote it in my notebook that
6 we all shared.

7 Q I'm going to draw your attention to another subject, Jane
8 Doe 1. Did your father also engage you in doing photo shoots
9 when you had no clothes on?

10 A Yes.

11 Q Whose idea were those photo shoots?

12 A My dad's.

13 Q I want to step back to the website just for a minute. Did
14 you receive any money from your father for the photo shoots
15 you did for the website?

16 A Yes. Every -- not every shoot, but for some of them he
17 gave us \$20.

18 Q Did you also get money from your father for the nude photo
19 shoots that you did?

20 A I don't remember. I don't think I received any.

21 Q Okay. Had he told you that you would get money for doing
22 the nude photo shoots?

23 A Yes, he told us we would get more.

24 Q He told you you would get more money for doing the nude
25 photo shoots?

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1 A Yes.

2 Q Did he say what the nude photo shoots were for?

3 A For special people on the website that paid more.

4 Q So the nude photo shoots were for special people that
5 would pay more?

6 A Right.

7 Q Did anyone else ever take nude photographs of you?

8 A No.

9 Q I want to draw your attention, Jane Doe 1, and talk about
10 Spectrum Gym for a minute. Again, you took gymnastics at
11 Spectrum Gym; is that correct?

12 A Correct.

13 Q Is that part of something that you did with your father or
14 did you do that apart from your father as well?

15 A I did it with my father. He took me there.

16 Q Did you ever do any nude photo shoots at the Spectrum Gym?

17 A Yes.

18 Q Do you recall just around how old you were or what grade
19 you were in when the photo shoot at Spectrum Gym was done?

20 A I was 12.

21 Q And that would have you what, in like 6th or 7th grade; is
22 that correct?

23 A Yes.

24 Q Who all was there for the nude photo shoot at Spectrum
25 Gym?

1 A Me, Jane Doe 2 and my dad.

2 Q How did you guys get access to the gym? Let me ask it
3 this way first: Was the gym open at the time that your father
4 did this photo shoot there?

5 A No, he had a key to the gym.

6 Q Your father had a key to the gym?

7 A Yes.

8 Q Whose idea was it to go to the gym that evening?

9 A It was his idea.

10 Q I suppose I should ask for clarification. Was there just
11 this one nude photo shoot at the gym or were there other nude
12 photo shoots at the gym?

13 A There was one.

14 Q Okay. So the one that was at the gym, he had a key to get
15 in and it was his idea to go?

16 A Yes.

17 Q The gym was closed at the time?

18 A Right.

19 Q Whose idea was it to be nude at the gym?

20 A His idea.

21 Q This may seem like kind of a silly question, Jane Doe 1,
22 but I ask it just for clarity. Did you normally do gymnastics
23 or were you normally nude at the Spectrum Gym?

24 A No.

25 Q Did your father say what the purpose was of taking nude

1 pictures in the gym?

2 A They were for the website.

3 Q He said they were for the website?

4 A Yes.

5 Q Was it your understanding that you would get some money
6 for taking these pictures?

7 A Yes.

8 Q Was it your understanding that you would get more money
9 for these pictures than for the clothed ones?

10 A Yes.

11 Q Getting into the gym, how many ways in and out of the gym
12 space are there?

13 A There's one main door, and there was one side door.

14 Q Okay. Does the main door have a window in it or anything
15 like that?

16 A Yeah, it was all glass.

17 Q It was all glass?

18 Was that covered over for the purposes of the photo
19 shoot or was that left uncovered?

20 A He covered it up with a blanket.

21 Q We're talking this afternoon about a photo shoot that
22 happened at Spectrum Gym. Was that done with a regular
23 camera, a video camera, both or something else?

24 A He had a regular camera and a video camera.

25 Q Do you know whether he used both of those at the same time

1 or do you recall?

2 A They weren't at the same time.

3 COURT REPORTER: Were or weren't?

4 THE WITNESS: They weren't.

5 BY MR. COOK:

6 Q They were not?

7 A They were not.

8 Q Do you recall whether your father asked you to take your
9 clothes off before or after the door was covered over?

10 A He told us to after it was covered.

11 Q I want to talk a little bit about what your father told
12 you at the photo shoot at Spectrum Gym. What did you and your
13 sister do during the time that your father had the video on
14 and was taking pictures?

15 A We talked to the video about how gymnastics is called the
16 naked sport, like the real meaning of it.

17 Q Who told you to talk that way?

18 A My dad.

19 Q Did you use your names or your model names?

20 A Model names.

21 Q During the time that you were in the gym naked and your
22 father was taking pictures and video, did you do gymnastics
23 then? Did you do some gymnastics moves?

24 A Yeah, we -- we just -- he told us to like run around and
25 we just goofed off and did our own gymnastics, and then he

1 would take pictures of us, and he told us to do specific
2 moves.

3 Q Okay. Just so I understand that correctly, so you kind of
4 goofed around doing some regular gymnastics moves that he took
5 pictures and video of?

6 A Yes.

7 Q And then occasionally he would have you do certain moves?

8 A Yes.

9 Q Certain poses as well?

10 A Yes.

11 Q Jane Doe 1, I want to approach you with what's been marked
12 as Government's Exhibit 2, if I may, Your Honor.

13 THE COURT: You may.

14 BY MR. COOK:

15 Q Jane Doe 1, I'm going to ask you to take a look at
16 Government's Exhibit 2 there, and just flip it open. There's
17 two pages; is that correct?

18 A Yes.

19 Q The second page is an image. Is that an image of you?

20 A Yes.

21 Q You can go ahead and close that.

22 Now, was that image a picture from the gym session
23 at the Spectrum Gym we've been talking about?

24 A Yes.

25 Q And again, it does depict you?

1 A Yes.

2 Q Is that a picture that your father took?

3 A Yes.

4 Q I know you only glanced at it briefly, but we have gone
5 over this image --

6 A Right.

7 Q -- a couple times before, correct?

8 Okay. What were you doing in that image? Were you
9 getting ready to do a gymnastics move?

10 A Yeah, I was getting ready to do a handstand.

11 Q Who told you to do the handstands?

12 A My dad.

13 Q Does that picture accurately portray you at the photo
14 shoot in the gym you did?

15 A Yes.

16 Q I'm going to approach you again, if I may.

17 Jane Doe 1, at the bottom of the image, which is
18 page 2 of Government's Exhibit 2, you'll see that there's
19 noted there a date that starts with the year followed by the
20 month, followed by the number -- it says 2004.09.19. Does
21 that time frame seem to be about right from when that gym
22 photo session took place?

23 A Yes.

24 Q There's a time noted in military time, 19:48.16, which
25 would be 7:48 p.m. Does that sound about right for when you

1 were at Spectrum Gym and your father was taking pictures of
2 you there?

3 A Yes.

4 Q Thank you, Jane Doe 1.

5 MR. COOK: Your Honor, at this time, I would offer
6 Government's Exhibit 2 into evidence.

7 THE COURT: Any objection?

8 MS. COOK: No.

9 THE COURT: Exhibit 2 is admitted.

10 (Plaintiff's Exhibit 2 received in evidence.)

11 BY MR. COOK:

12 Q With regard to the nude photo shoot at the gym, did your
13 father tell you anything about whether you could talk to your
14 mother about that photo shoot?

15 A He told us not to.

16 Q You testified earlier there were approximately five nude
17 photo shoots that your father did with you. Was there another
18 photo shoot, Jane Doe 1, that involved pictures showing items
19 in the background of both the, I guess Nickelodeon character
20 SpongeBob?

21 A Yes.

22 Q Do you know about how old you were, just generally, when
23 those images were taken?

24 A Around 12.

25 Q Whose idea was the photo shoot with the SpongeBob items?

1 A My dad's.

2 Q Who suggested the scene? Who suggested using the

3 SpongeBob items in the nude photo shoot?

4 A My dad.

5 Q Did he instruct you in any poses for that photo shoot?

6 A Yes.

7 Q Speaking generally, what did your father tell you to do

8 for that photo shoot?

9 A He told me to pretend like I was sleeping, and wake up in
10 the nude, and I put on a bra and underwear, and then he had me
11 pose. And then he said to go to the closet and pretend like I
12 was getting dressed.

13 Q Do you know about what time of day, as best as you can
14 recall, that these pictures were taken?

15 A Around noon or the middle of the day.

16 Q Somewhere around noon, but had you gotten up already for
17 the day at that point?

18 A Yes.

19 Q So were you actually waking up from being asleep as the
20 pictures in that photo shoot suggested?

21 A No, it was posed.

22 Q Did you normally sleep in the nude at that point?

23 A No.

24 MR. COOK: I'd like to approach the witness, if I
25 may, Your Honor?

1 THE COURT: You may.

2 BY MR. COOK:

3 Q Jane Doe 1, I'm going to approach you with Government's
4 Exhibit 1. It has a cover sheet followed by nine pages of
5 images. I'm going to ask you to just briefly take a look at
6 them.

7 A (Witness complied.)

8 Q Are those all images from the -- I suppose just so we can
9 be on the same terms here, we'll call this the SpongeBob photo
10 shoot. Are those all images from the SpongeBob photo shoot?

11 A Yes.

12 Q I'm going to open up to the first page. I'm sorry to
13 stand next to this picture, but you'll note on the bottom the
14 date again. It says 2004/09/06, indicating September 6th of
15 2004. Does that seem like it may be, to your recollection,
16 around when this photo shoot was done?

17 A Yes.

18 Q Following that date, again in military time, this is
19 11:29:44, and this is on page 2 of Government's Exhibit 1,
20 indicating 11:24 [sic] in the morning; does that seem around
21 the time, to your recollection, that this photo shoot was
22 done?

23 A Yes.

24 Q These are the nine images that was in Government's Exhibit
25 1. Does that depict you? Are you the person depicted in that

1 picture?

2 A Yes.

3 Q Do these images accurately reflect the photo shoot that
4 your father conducted that day?

5 A Yes.

6 MR. COOK: At this point, Your Honor, I would offer
7 into evidence Government's Exhibit 1.

8 THE COURT: Any objection?

9 MS. COOK: No, Your Honor.

10 THE COURT: Exhibit 1 is admitted.

11 (Plaintiff's Exhibit 1 received in evidence.)

12 BY MR. COOK:

13 Q Jane Doe 1, we just showed you nine of -- nine images that
14 were from the SpongeBob photo shoot. To your recollection,
15 did he take more pictures that day during that photo shoot?

16 A Yes.

17 Q I'm going to approach, if I may, Your Honor, with
18 Government's Exhibit 1B.

19 THE COURT: 1B?

20 MR. COOK: 1B.

21 THE COURT: B as in Barker?

22 MR. COOK: B as in Barker, yes.

23 BY MR. COOK:

24 Q Jane Doe 1, I'm going to ask you to briefly open up
25 Government's Exhibit 1B and flip through -- excuse me just one

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1 moment. Government's Exhibit 1B has a cover page plus about
2 86 images behind that cover page.

3 Jane Doe 1, what does Government's Exhibit 1B have
4 in it?

5 A It has my bed with SpongeBob blankets and me with my
6 SpongeBob blanket and SpongeBob bra and underwear.

7 Q Does that -- do those appear to be at least many of the
8 images from the photo shoot revolving around the SpongeBob
9 items?

10 A Yes.

11 Q And it does accurately reflect that photo shoot?

12 A Yes.

13 Q It does depict you, right?

14 A Yes.

15 MR. COOK: At this point, I would offer into
16 evidence Government's Exhibit 1B.

17 MS. COOK: It was cited in the defense pretrial
18 motion.

19 THE COURT: All right. Those objections are
20 overruled for the reasons cited by the Court previously.
21 Exhibit 1B is admitted pursuant to 404(b).

22 (Plaintiff's Exhibit 1B received in evidence.)

23 BY MR. COOK:

24 Q Jane Doe 1, I want to ask you a couple of at least
25 relatively specific questions about the pictures that are in

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1 Government's Exhibits 1 and 1B, the SpongeBob pictures.

2 Let's concentrate on Government's Exhibit 1 for a
3 minute. That has the cover page, plus the nine images, okay?
4 Jane Doe 1, we've had an opportunity to talk before today,
5 correct?

6 A Correct.

7 Q You've seen those images before and talked through them
8 with me?

9 A Yes.

10 Q And Government's Exhibit 1, a number -- some of the images
11 show you -- you're nude in those images; is that correct?

12 A Yes.

13 Q In some of those images, you are holding a leg out to the
14 side, that's your recollection?

15 A Yes.

16 Q Who -- did you do that on your own or did your father
17 direct you to take that pose?

18 A He directed me to.

19 Q There's some images of you getting out of bed, opening
20 your legs as you do so. Did your father direct you in those
21 poses or did you do that on your own?

22 MS. COOK: Objection.

23 THE COURT: Sustained.

24 BY MR. COOK:

25 Q How did you end up in the poses in which your legs are

1 opening getting in and out of bed?

2 A I'm sorry.

3 Q How did the poses come about where you're getting out of
4 bed with your legs open that were in Government's Exhibit 1?

5 A I had started to get out myself when he told me to stop or
6 move in a certain way.

7 Q Where did these SpongeBob items that are depicted in
8 Government's Exhibits 1 and 1B, where did those items come
9 from? Who got those for you?

10 A The bra and underwear?

11 Q Yes, the bra and underwear, the SpongeBob blanket, all of
12 that?

13 A The blanket was already mine that I had on my bed, and the
14 bra and underwear, he might have bought for me or it might
15 have already been mine. I'm not sure.

16 Q So you're not sure.

17 If I could have a moment with co-counsel, please.

18 THE COURT: Yes.

19 (Off-the-record discussion.)

20 MR. COOK: I'm sorry, if I may proceed, Your Honor?

21 THE COURT: You may.

22 BY MR. COOK:

23 Q I had asked you the question, Jane Doe 1, whether anyone
24 else had taken nude pictures of you between the ages of 10 and
25 13. To your recollection, has anyone other than your father

1 ever taken nude photographs of you?

2 A No.

3 THE COURT: I'm prepared to take an afternoon recess
4 so that we push through the normal break time, but I want to
5 ask counsel if you wish to have the Court make a 404(b)
6 instruction to the jury with respect to Exhibit 1B?

7 MS. COOK: Yes, Your Honor.

8 THE COURT: And should I do that now before you
9 cross-examine?

10 MS. COOK: Yes.

11 THE COURT: Ladies and gentlemen, the matter that I
12 just discussed in rather cryptic ways between defense counsel
13 and me has to do with the admissibility or the use of this
14 testimony and this exhibit that was just elicited from
15 Ms. Russell.

16 The charge against the defendant in Count 1
17 identifies specific images. How many, eight are there?

18 MR. COOK: In Government's Exhibit 1, there were
19 nine images that were the substance of Count 1. Government's
20 Exhibit 1B had 86 images.

21 THE COURT: Okay, I'm just talking about what's
22 charged. Nine images are charged in Count 1. So when you
23 finally receive the case and deliberate, you'll have to decide
24 whether, with respect to those nine images, there was a
25 violation of law that occurred.

1 The Court has permitted additional images to be
2 admitted into evidence of which these nine are part of the
3 series. The reason that the Court determined that the others
4 are admissible is to the extent that they may tend to prove,
5 and you'll have to decide whether they do, such things as the
6 defendant's opportunity to create the images that he's charged
7 with, if he did -- this is all alleged, you have to decide --
8 his intent or his preparation, his plan or his knowledge,
9 absence of mistake or accident.

10 So the Court permitted those exhibits to come in for
11 those additional purposes, to help you understand better the
12 surrounding circumstances of the alleged offense. You may
13 consider these additional items of evidence only for these
14 limited purposes. All right?

15 Now, let's take a 15-minute recess, and then we'll
16 come back and we'll go till, oh, 5:15 or so, when it seems
17 like a natural place to break in the action.

18 During this time in recess, as at all times when
19 you're away from the court, remember and follow my admonitions
20 to you. You may rise and depart.

21 (Jury excused)

22 (Recess taken.)

23 (Open court, jury present)

24 THE COURT: You may be seated.

25 You may cross-examine, Ms. Cook.

1 MS. COOK: Thank you, Your Honor.

2 **CROSS EXAMINATION**

3 BY MS. COOK:

4 Q Jane Doe 1, as I understand your testimony, your parents
5 were divorced when you were still quite young?

6 A Right.

7 Q And you don't have any recollection of living in the home
8 with your father on a full-time basis?

9 A Yeah, I do.

10 Q Primarily your recollection is of visiting him on
11 weekends?

12 A When I -- when they were together?

13 Q I guess what I'm asking you is if the majority of the time
14 that you've spent with your father during your life has been
15 visitation on weekends?

16 A On weekends, and during the summer we visited every other
17 week or every other -- it was different. It's always been
18 different.

19 Q You had longer periods of visitation in the summer months?

20 A Right.

21 Q And took vacations with him?

22 A Yes.

23 Q And your sister and brother?

24 A Yes.

25 Q And would it be fair to say that during those years when

1 you were visiting with him, you had a good relationship with
2 him?

3 A Yes.

4 Q You felt close to him?

5 A Yes.

6 Q And your recollection was that your father was always
7 taking photographs of the family?

8 A Not always, but if the -- like if we went somewhere
9 exciting.

10 Q Do you recall that he sometimes worked at jobs that
11 involved photography?

12 A Yes.

13 Q And that he would take photographs of you and your sister
14 and your brother?

15 A Yes.

16 Q Was that something that you understood he enjoyed doing?

17 A Yes.

18 Q And that was true during the entire time that you were
19 growing up?

20 A Yes.

21 Q Now, I want to talk to you a little bit about the modeling
22 website that you testified about. There came a time when you
23 and your father discussed establishing a modeling website for
24 you?

25 A Yes.

1 Q And at the time when you and he talked about that, he
2 already had modeling websites for some other people.

3 THE COURT: Is that a question?

4 MS. COOK: Yes.

5 A I don't know.

6 Q Did he ever talk to you about modeling websites which he
7 had already established for other people?

8 A No.

9 Q Did you ever see any of those modeling websites?

10 A I never knew, so no. I saw other ones that were on the
11 Internet after he had already asked me. I don't know if he
12 controlled those or not.

13 Q Did you see those other modeling websites on the Internet
14 because your father showed them to you?

15 A Yes.

16 Q Were they examples of other young people around your same
17 age?

18 A Yes.

19 Q Were they similar websites to the one that was established
20 for you?

21 A Most of them, they were nude.

22 Q All right. Now, when you and he discussed establishing a
23 website for you, it was your understanding that a name other
24 than your real name would be selected for the website?

25 A Yes.

1 Q And was it your understanding that your father thought it
2 wasn't a good idea to have your real name on the Internet?

3 A Yes.

4 Q When you talked with your father about the purpose of the
5 website, did he tell you that he hoped that you might get a
6 modeling job as a result of that?

7 A No.

8 Q Did he tell you that one of the reasons for establishing
9 the website was to try to attract some income from the website
10 from businesses that might be looking for young models?

11 A He didn't tell me that directly at first.

12 Q Did he tell you that at some point in time?

13 A He said that we would get money for it.

14 Q All right. And during the period of time this modeling
15 website was on the Internet, there were occasions where money
16 did come in as a result of that website?

17 A Yes.

18 Q And on those occasions, he gave you money?

19 A Yes.

20 Q Or put money into an account for you?

21 A I don't know about that.

22 Q Did he tell you that that was one of his plans?

23 MR. COOK: Objection, calls for hearsay, Your Honor.

24 THE COURT: Sustained.

25 BY MS. COOK:

1 Q You had an opportunity to look at the modeling photographs
2 that were taken of you?

3 A Yes.

4 Q And when you looked at those modeling photographs, at the
5 time you looked at them, you thought that they looked much
6 like modeling shots that you might have seen in teen
7 magazines?

8 MR. COOK: Objection, Your Honor. There's no
9 foundation that she's seen such teen magazines.

10 THE COURT: Sustained, lack of foundation.

11 BY MS. COOK:

12 Q Have you ever looked at teen magazines?

13 A Yes.

14 Q When you looked at those teen magazines, did you see
15 photographs?

16 THE COURT: You have to put it in time, Counsel,
17 when she would have looked at those, vis a vis when hers were
18 produced.

19 BY MS. COOK:

20 Q At or around the time that your father was taking
21 photographs of you for your modeling website, did you have
22 occasion to look at teen magazines?

23 A Yeah.

24 Q And did some of those teen magazines contain photographs
25 of young persons who were modeling?

1 A Yes.

2 Q Did you believe that the photographs that were taken of
3 you were similar to those modeling photographs?

4 A I don't remember how -- I don't remember what I thought
5 when I was looking at them. That didn't come up in my mind.

6 Q All right. When you said that in taking these modeling
7 photographs, your father would ask you to pose --

8 A Yes.

9 Q -- do you mean that he took you to a particular location
10 and took photographs of you for the modeling website?

11 A Yes.

12 Q And that he might ask you to stand in a particular way
13 when he took the photographs?

14 A Yes.

15 Q Did you believe that the positions in which he was asking
16 you to stand at that time were similar to photographs of
17 models that you may have seen?

18 MR. COOK: Objection.

19 THE COURT: Objection sustained.

20 MR. COOK: Thank you.

21 BY MS. COOK:

22 Q At the time you were participating in these modeling
23 photographs, you didn't think that there was anything wrong
24 with the modeling that you were doing, did you?

25 A When?

1 Q When you were having the photographs taken for the
2 modeling website.

3 MR. COOK: I'm going to object as to relevance, Your
4 Honor?

5 THE COURT: Sustained.

6 A I did think --

7 THE COURT: Hold on. I sustained the objection.
8 You wouldn't know that that means you don't have to answer.

9 BY MS. COOK:

10 Q All right. Did you have occasion to look at your own
11 modeling website?

12 A Yes.

13 Q And when you looked at your own modeling website --

14 THE COURT: Is this back at the time it was being
15 created?

16 MS. COOK: Yes.

17 THE COURT: Okay, go ahead.

18 BY MS. COOK:

19 Q And when you looked at your modeling website at that time,
20 you saw photographs of yourself posted?

21 A Yes.

22 Q None of those photographs depicted you in the nude, did
23 they?

24 A Not the ones that you could view. I don't know how to get
25 to the nude ones.

1 Q None of the ones that you saw depicted you in the nude,
2 did they?

3 A No.

4 Q Now, you testified that at some point, there was a
5 discussion with your father about taking nude photographs?

6 A Yes.

7 Q Am I correct that that took place sometime after the
8 modeling website was first established?

9 A That it first started?

10 Q I'm sorry?

11 A You asked -- can you ask it again, please?

12 Q Yes, I'm sorry. It was a confusing question.

13 When the nude photographs of you were taken, were
14 those photographs taken after your modeling website had been
15 established?

16 A Yes.

17 Q And you testified that during some of these times when
18 nude photographs were taken, that your father would ask you to
19 pose; is that correct?

20 A During the photo shoots?

21 Q Yes.

22 A Yes.

23 Q Were these generally photo shoots with many photographs
24 taken in a series?

25 A Yes.

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1 Q And, for example, Government's Exhibit 1 contains nine
2 photographs; is that your recollection?

3 A Yes.

4 Q And Government's Exhibit 1B contains 86 photographs?

5 A Yes.

6 Q Were the photographs that were taken that you saw, which
7 are now contained in Government's Exhibit 1, a part of a
8 larger photo shoot included in Government's Exhibit 1B?

9 A Are there more pictures; is that what you're asking?

10 Q I'm asking whether those nine photographs were actually
11 part of the series that included the 86 photographs?

12 A Yes.

13 Q And those photographs depict you with some items with a
14 SpongeBob theme?

15 A Yes.

16 Q Were those photographs taken in your bedroom?

17 A Yes.

18 Q And that would be the bedroom that you shared with your
19 sister?

20 A Yes.

21 Q In your father's home?

22 A Yes.

23 Q Were the SpongeBob sheets or blanket, were they already in
24 the bedroom?

25 A Yes.

1 Q Was there a time when you asked to have -- to receive
2 SpongeBob-themed items for Christmas?

3 A Yes, I asked for a blanket.

4 Q And around that period of time, did you have a number of
5 different items with that same theme?

6 A Yes.

7 Q You indicated that when your father took those photographs
8 having to do with the SpongeBob theme, that he asked you to
9 pose?

10 A Yes.

11 Q When he was taking these photographs of you, he didn't ask
12 you to act sexy, did he?

13 A I don't remember.

14 Q He didn't ask you to touch yourself in any kind of a
15 sexual way, did he?

16 A No.

17 Q And he didn't ask you to simulate or mimic any kind of
18 sexual activity?

19 A No.

20 Q With respect to the photographs that were taken in the
21 gym, was this a gym that you and your sister had visited
22 before?

23 A Yes.

24 Q Was this a gym where you and your sister had been engaged
25 in gymnastics?

1 A Yes.

2 Q Were you on some kind of a gymnastics team that practiced
3 there?

4 A Yes.

5 Q Was your father employed at the gym?

6 A Yes.

7 Q And so it would have not been unusual for you to go to the
8 gym with him?

9 A It was after hours, so yeah.

10 Q During regular hours, was it common for you to be at the
11 gym with your father?

12 A If -- yeah, I would.

13 Q Was he one of the people who instructed either you or your
14 sister or both of you in gymnastics?

15 A I don't remember who my sister's coach was, but he wasn't
16 my main coach, but he still coached me, like helped me out and
17 stuff.

18 Q All right. And on this particular occasion when you went
19 to the gym, as I understand it, there was a discussion between
20 you and your father about whether or not you would take your
21 clothes off and engage in gymnastics?

22 A Was there a discussion?

23 Q Yes.

24 A Yes.

25 Q And during the period of time that you were in the gym,

1 you did engage in some kind of gymnastics maneuvers?

2 A Yes.

3 Q Was your father taking photographs pretty continuously
4 while you were in the gym?

5 A Yes.

6 Q Of both you and your sister?

7 A Yes.

8 Q And when you said that he asked you to pose, I recall that
9 Mr. Cook asked you on one occasion whether he asked you -- did
10 he ask you to do some kind of a handstand or something?

11 A Yes.

12 Q And is that what you meant when you said that he asked you
13 to pose?

14 A Can you ask again?

15 Q Yes. You indicated on your direct examination that at one
16 point in time while you were in the gym, your father asked you
17 to do a handstand?

18 A Yeah.

19 Q Is that what you meant when you said he asked you to pose
20 in various ways?

21 A Yeah, I mean there were other times.

22 Q All right, but that's an example of what you meant by
23 asking you to pose?

24 A Yeah.

25 Q And with respect to the manner in which he asked you to

1 pose, again in the gym, he didn't ask you to act sexy?

2 A No.

3 MR. COOK: I'm going to object. That calls for
4 hearsay.

5 THE COURT: Sustained.

6 BY MS. COOK:

7 Q Did he also ask you when you were in the gym to perform
8 other kinds of gymnastics --

9 A Yes.

10 Q -- that you would have been in the habit of doing while
11 you were clothed at other times in the gym?

12 A Yes.

13 Q And other than you and your sister and your father, there
14 was no one else in the gym at the time?

15 A Yes.

16 Q Yes, meaning there was no one else there?

17 A Right, there was no one else.

18 Q Okay.

19 MS. COOK: I have no further questions.

20 THE COURT: Redirect?

21 MR. COOK: May I have just a moment, Your Honor?

22 THE COURT: Okay.

23 **REDIRECT EXAMINATION**

24 MR. COOK: I have just a couple of questions if I
25 may, Your Honor.

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1 THE COURT: You may.

2 BY MR. COOK:

3 Q How are you doing up there? You've been up there a while.

4 A I'm fine.

5 Q Miss Cook talked to you about the fact that your father
6 took frequent photographs of you; that is correct, right?

7 A Right.

8 Q The images that you were shown from Government's Exhibit 1
9 and 1B, which were the SpongeBob picture, and the gym
10 pictures, those were specific photo shoots; is that correct?

11 MS. COOK: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. COOK:

14 Q Were those photos -- how were those photos produced? How
15 did those photos come to be taken?

16 A He decided that we were going to take them. He thought
17 them up himself.

18 Q He decided that you were going to take them?

19 A Yeah.

20 MR. COOK: I think that's all I have, Your Honor.

21 THE COURT: Recross?

22 MS. COOK: No, Your Honor. Thank you.

23 THE COURT: Jane Doe 1, thank you very much. You
24 may step down from the witness stand. Take that microphone
25 with you, and you can give it to Miss Schneeman over here on

1 your way out.

2 Or you can give it to Mr. Cook.

3 MR. COOK: I thought I'd intercept it.

4 THE COURT: That's a long enough day for us today.

5 So we'll wrap it up for today and start tomorrow at 9:30.

6 We'll be ready for you before that. We'll try to have the

7 coffee going up there. So if you'll get here a little before

8 you're supposed to be down here, so aim for 9:15 or so, we

9 won't worry about you and you'll be here on time.

10 Some of you are coming from a bit of a distance. I

11 know that. And the traffic patterns are anything but

12 predictable. So give yourselves plenty of time so you're not

13 having to be breathless when you get here and also assuming

14 too many risks in getting here, but we can't start without

15 you.

16 If something comes up so that you are delayed, you

17 get a flat tire or something like that, use your cell phone

18 and call us here at the courthouse so we know what's up,

19 because we'll start looking for you if you're not here and we

20 haven't heard from you. We can't, as I've said, start without

21 you.

22 Tonight, while you're in recess from this trial,

23 remember and follow my admonitions to you. You're not to talk

24 about the case among yourselves or allow anyone to talk to you

25 about it. Don't form any opinions or conclusions with respect

1 to any of these matters until the case is finally submitted to
2 you for your deliberations.

3 Don't read anything, view anything, listen to
4 anything. This includes everything electronic that I read to
5 you earlier in my list; but basically the object is that you
6 have to be able to decide this case based on what happens here
7 in this courtroom, within these walls, without any other
8 extraneous or outside influences. So if you'll follow that,
9 we'll be in good stead.

10 Remember, tonight you can use the same techniques
11 that I suggested for you to use at noon, and that is to hold
12 off any innocent, interested inquiries by people who are close
13 to you and say "Man, I can't talk about it. That's what Judge
14 Barker said." And then you can tell them that you'll talk to
15 them about it later. That was the promise you've made, and we
16 know you understand the importance of it because that's one of
17 the reasons that you were selected to serve because you gave
18 us every reason to believe that.

19 So we'll call it a day. Thank you very much. We'll
20 look forward to seeing you in the morning. You may rise and
21 depart.

22 (Jury excused)

23 THE COURT: The jury's departed. I want to put on
24 the record the fact of the view of Exhibits 1, 1B and 2 by the
25 jury in the jury room, as was approved by the lawyers during

1 the recess, so that they could review those exhibits without
2 having the witness who is depicted there be present for that
3 particular otherwise awkward time.

4 At my direction, Miss Schneeman took them up to the
5 jury room and instructed the jury not to discuss them, just
6 review them, and when they're completed, to hand them back to
7 her. Is that what happened?

8 THE CLERK: It is.

9 THE COURT: So we have them back here now for your
10 use in the trial.

11 We'll start up, as I said, at 9:30. Do you expect
12 to call these remaining five witnesses, Government?

13 MS. HELART: We'll start off with Jane Doe 2 in the
14 morning; we will go to Andy. We will then finish with Mike
15 Johnson. We do not anticipate calling Jeff Catt.

16 THE COURT: How about Mr. Rothrock?

17 MS. HELART: He's more of a rebuttal witness.

18 THE COURT: So we should be through those by noon.
19 So whatever evidence the defense is going to put on, if any,
20 should be right ready to go.

21 I'll have a set of instructions for you in the
22 morning to review. I know that doesn't give you as much time
23 as if you had them tonight, but I need to sort of see how
24 things are going to unfold before I can give you a dependable
25 set, but we'll have some for you early in the morning.

1 Anything else tonight?

2 (Off-the-record discussion.)

3 Goodnight all.

4 (Court adjourned at 5:23 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Laura Howie-Walters, hereby certify that the foregoing is a true and correct transcript from reported proceedings in the above-entitled matter.

/S/LAURA HOWIE-WALTERS September 9th, 2010

LAURA HOWIE-WALTERS, RPR/CSR
Official Court Reporter
Southern District of Indiana
Indianapolis Division